

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 101 OF 2014, 204 OF 2014
AND 261 OF 2014

BETWEEN: **SALENDRA SEN SINHA**

Applicant

AND: **STATE**

Respondent

Counsel: **Ms. Vasemaca T. Narara for the Applicant**
Mr. Josaia B. Niudamu for Respondent

Date of Hearing: **13 April 2015**

Date of Ruling: **17 April 2015**

RULING

1. This is an application for release of the properties seized from the Applicant during the police investigation of him in 2008. Some of the properties seized from him are released to him and he makes an application for the release of balance of the properties. Police denied that such items were seized from him.
2. The Court directed both parties to file written submissions on Jurisdiction of this Court to hear such applications.
3. Both parties have filed written submissions.
4. State had taken up the position that this Court has no Jurisdiction to hear this matter and the Applicant could file a civil claim.

5. The Applicant had taken the position that Section 155 of the Criminal Procedure Decree vests Jurisdiction in this Court to release the properties. The case of ***Khan v State*** [2008] FJHC 68; HAM 28.2008 (11 April 2008) is also cited. That is case the where some exhibits were released while case was pending and the exhibits were vehicles.
6. It is clear that High Court has unlimited original Jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under the Constitution or any other law. (Section 100 (3) of the 2013 Constitution)
7. In ***Balaggan v State*** [2012] FJHC 923 Hon. Mr. Justice Daniel Goundar held:

*[22] The inherent powers are the residual or the reserved powers, which the Court exercises independently of section 6 of the Administration of Justice Decree. For instance, in ***Connelly v DPP*** [1964] AC 1245 (HL), a residual discretion to stay criminal proceedings on the ground of abuse of process was recognized. In New Zealand that discretion was affirmed in the influential decision in ***Moevao v Department of Labour*** [1980] 1 NZLR 464(CA). The inherent power of the superior courts to stay criminal proceedings was recognized by the High Court of Australia in ***Ridgeway*** [1994-95] 184 CLR 19. In ***Ridgeway***, Gaudron J described the power at p. 74:*

"The inherent ... powers of superior courts to prevent an abuse of process exist to protect the courts and their proceedings, and to maintain public confidence in the administration of justice ... And the maintenance of public confidence in that regard depends on ensuring that judicial proceedings serve the ends of justice, not injustice ..."

*[23] The Court of Appeal in ***State v Sat Narayan Pal*** Criminal Appeal No. AAU0036/2006 (8 April 2008) considered the cases from the common law jurisdiction and reaffirmed the inherent power of the High Court to stay criminal proceedings, by dismissing the ***State***'s appeal against a decision staying the prosecution for abuse of process.*

*[24] While I accept that the scope of the inherent powers of the superior courts in criminal cases is not restricted to the prevention of abuse of process, the jurisdiction is not something that should be invoked at whims of the litigants. The Court has inherent jurisdiction to order name suppression of the accused (***State v. Doreen Singh*** Criminal Review Case No. HAR 005/09 (27 August 2009), or order disqualification of counsel representing an accused (***State v. Alifereti*** Criminal Misc. Case No. HAC 18/05S (2 April 2008). But these powers are invoked to prevent an*

injustice so that the public confidence in the administration of the criminal justice system is maintained. '

8. The Section 155 of the Criminal Procedure Decree provides:

155. — (1) It shall be lawful for any court in any criminal proceedings to make orders for—

(a) the preservation or interim custody or detention of any property or thing produced in evidence or as to which questions may arise in the proceedings;

(b) the sale, destruction or other disposal of any such property or thing which may be of a perishable nature or liable to deteriorate, or which may be dangerous;

(c) the restoration or awarding of possession of any such property or thing to the person appearing to the court to be entitled to possession of it, without prejudice to any civil proceedings which may be taken in relation to it;

(d) the payment by any person of the expense incurred in the preservation, custody, detention, sale, destruction or other disposal of any such property or thing, or the proceeds of it;

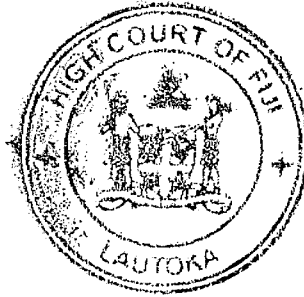
(e) the application of any such property or thing, or the proceeds of it, towards satisfaction or payment of any costs or compensation which are ordered by the court to be paid by any person, or to the police or any other emergency service as compensation for the services that they have been called upon to perform as a result of the commission of the offence.

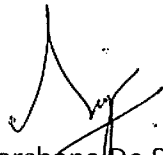
(2) Any order made under the provisions of sub-section (1) (d) may be enforced as if the order were the imposition of a fine.

(3) When an order is made under the provisions of this section in a case in which an appeal lies, the order shall not, except when the property is livestock or is liable to deterioration or decay, be carried out until the period allowed for presenting the appeal has passed or, when the appeal is presented within such period, until the appeal has been determined.

9. The properties in question are not produced as evidence in Court. Therefore, there is no application of Section 155 to the properties in question.

10. The Applicant had failed to satisfy this Court that any injustice will be caused as him as he had an alternative ready of making a civil claim.
11. Therefore, this Court is of the view that the Applicant had failed to establish that there is Jurisdiction in this Court to hear and determine this matter.
12. For the reasons given above, all three applications are dismissed for the want of jurisdiction.




Sudharshana De Silva
JUDGE

At Lautoka
17th April 2015

Solicitors: Office of the Legal Aid Commission for the Applicant
Office of the Director of Public Prosecutions for Respondent