

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 62 of 2017**

**STATE**

**V**

**NIRAJ NIRMAL KUMAR**

**Counsel** : Ms. R. Uce for the State.  
: Mr. A. J. Singh for the Accused.

**Date of Hearing** : 22 May, 2017  
**Date of Ruling** : 26 May, 2017

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**RULING**

[In respect of section 4 (2) Criminal Procedure Act]

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**BACKGROUND INFORMATION**

[1] The Accused is charged with the following offences:

**FIRST COUNT**

**Statement of Offence**

**ACT INTENDED TO CAUSE GRIEVOUS HARM:** Contrary to section 255  
(a) of the Crimes Act of 2009.

### **Particulars of Offence**

**NIRAJ NIRMAL KUMAR**, on the 18<sup>th</sup> day of February, 2014 at Lautoka in the Western Division with intent to do grievous harm to **Timaima Colati** unlawfully caused grievous harm to **Timaima Colati** by bumping her, whilst driving motor vehicle registration number E1845.

### **SECOND COUNT**

#### **Statement of Offence**

**DESTROYING EVIDENCE:** Contrary to section 189 (b) of the Crimes Act of 2009.

#### **Particulars of Offence**

**NIRAJ NIRMAL KUMAR** on the 18<sup>th</sup> day of February, 2014 at Lautoka in the Western Division knowing that motor vehicle registration number E1845 is or may be required in evidence in a judicial proceeding, renders it incapable of identification by changing the paint colour of such motor vehicle.

- [2] On 2 March, 2017 the Accused appeared before the Magistrate's Court at Lautoka. The charges were read, explained and understood by the Accused in the Hindi language. The first phrase of disclosures was also served on the Accused thereafter he was released on bail.
- [3] Since count one is an indictable offence the learned Magistrate acting under section 191 of the Criminal Procedure Act transferred this matter to the High Court.
- [4] On 23 March, 2017 this matter was called in this court, the State made a suggestion that the matter could be remitted to the Magistrate's Court to

be tried under the extended jurisdiction of the High Court in accordance with section 4 (2) of the Criminal Procedure Act.

[5] Section 4 (2) of the Criminal Procedure Act states:-

*“(2) Notwithstanding the provisions of sub-section (1), a judge of the High Court may, by order under his or her hand and the seal of the High Court, in particular case or class of cases, invest a magistrate with jurisdiction to try any offence which, in the absence of such order, would be beyond the magistrate’s jurisdiction.”*

[6] The learned counsel for the Accused whilst arguing against the suggestion states that the discretion vested in a judge of the High Court under section 4 (2) of the Criminal Procedure Act has to be exercised judicially in view of the fact that the right of the Accused to be tried by peers is a fundamental right which should not be taken away lightly. Counsel relies on section 15 (1) of the Constitution of the Republic of Fiji.

[7] Section 15 (1) of the Constitution provides:-

*“Every person charged with an offence has the right to a fair trial before a court of law.”*

[8] Counsel submits that the Accused will get a fair trial in the High Court before a Judge and Assessors and urges upon this court to consider the following (page 2 of the written submission):-

*“(a) The trial before peer is trial independent persons who after trial merge anonymously in the community, from which they come.*

*(b) In an Assessor trial the participating lawyers are constrained to present the evidence and issues in a manner that can be understood*

*by lay man. The result being the Accused and the public can follow and understand the proceeding, (this point is vital as the prosecution does not wish to call a vital witness, a police officer who attended the scene, went to the hospital and recovered the stolen money).*

*(c) The Assessors give the appearance as well as substances of impartial justice in criminal cases and few lawyers with practical experience in criminal law will deny the importance of the Assessors as an institution.*

*(d) Assessors also protect against both the administration of justice and the Accused from the rash judgment and prejudices of the community itself.”*

[9] Section 4 (2) of the Criminal Procedure Act gives the judge of the High Court a discretion to invest a Magistrate with jurisdiction to hear and determine any offence triable in the High Court.

[10] Madigan J. in *Muskan Balaggan vs. State*, Criminal Misc. No. HAM 067 of 2011 (8 July, 2011) at paragraph 8 made this important and pertinent comment about the exercise of discretion by the High Court in remitting a matter to the Magistrate’s Court under section 4 (2) of the Criminal Procedure Act as follows:-

*“...This provision is again a discretionary one, on the motion of the judge and it is not to be invoked by application by either the prosecution [or] the accused. It could be suggested to the Court that a particular case might be suitable to be “sent down”, but ultimately [it] is for the Court to decide whether to use that procedural path or not.”*

[11] It is unfortunate that the Accused has raised the contention that he will not get a fair trial if his matter was tried in the Magistrate's Court but will get a fair trial in the High Court before a judge and assessors. This submission is not only misconceived but incongruous and speculative. In the High Court the opinion of the assessors are not binding on the Judge (section 237 (2) of the Criminal Procedure Act) this means a Magistrate will be in the same position as a Judge of the High Court when delivering judgment.

[12] Section 4 (2) of the Criminal Procedure Act gives a Judge of the High Court an unfettered discretion to invest a Magistrate with jurisdiction to try any offence even if beyond the jurisdiction of the Magistrate's Court. Calanchini J. Acting President, Court of Appeal (as he then was) in *Caniogo vs. State, Criminal Appeal No. AAU 115 of 2011* (28 June 2013) expressed the above in the following words at paragraph 10:-

*"One of the consequences of sub-section (2) is that when an accused has elected to be tried by the High Court (as for an indictable offence triable summarily) or has a right to be tried by the High Court (as for an indictable offence) a judge of the High Court can nevertheless invest a Magistrate with jurisdiction to try the offence even when to do so would be beyond the jurisdiction of the Magistrates Court."*

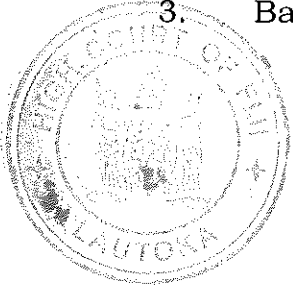
### **CONCLUSION**

[13] In view of the above and in accordance with section 4 (2) of the Criminal Procedure Act the following orders are made:-

1. This matter is remitted to the Magistrate's Court to be tried under the extended jurisdiction of the High Court.

2. The matter is adjourned to 31 May, 2017 for mention at 9.30am at Magistrate's Court, Lautoka.

3. Bail is extended for the Accused.



  
**Sunil Sharma**  
**Judge**

**At Lautoka**

26 May, 2017

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**M/s. Anil J. Singh Lawyers, Nadi for the Accused.**