

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL NO. HAA 27 OF 2023

IN THE MATTER of an Appeal against the
Decision of the Magistrate's Court of Nadi, in
Criminal Case No. 636 of 2012.

BETWEEN: **ANIZ AHMED**

APPELLANT

AND: **FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION (FICAC)**

RESPONDENT

Counsel: The Appellant Appears in Person
 Ms. Lanieta More for the Respondent

Date of Hearing: 27 March 2024

Judgment: 4 June 2024

JUDGMENT

- [1] This is an Appeal made by the Appellant against the conviction imposed on him by the Magistrate's Court of Nadi.
- [2] The Appellant was charged in the Magistrate's Court of Nadi, with one count of Bribery, contrary to Section 4 (2) (a) of the Prevention of Bribery Act No 12 of 2007 (Prevention of Bribery Act) and an alternative count of Abuse of Office, contrary to Section 139 of the Crimes Act No 44 of 2009 (Crimes Act). The charge read as follows:

CHARGE

COUNT 1

Statement of Offence (a)

BRIBERY: Contrary to Section 4 (2) (a) of the Prevention of Bribery Act No 12 of 2007.

Particulars of Offence (b)

ANIZ AHMED, on or about the 28th day of March 2012, at Nadi, in the Western Division, whilst being a Public Servant, namely a Road Safety Officer of the Land Transport Authority, without lawful authority or reasonable excuse, solicited and accepted an advantage namely \$28.00 in cash from Ajay Nand, on account of his abstaining from performing his duty in his capacity as a Road Safety Officer of the Land Transport Authority.

ALTERNATIVE COUNT

Statement of Offence (a)

ABUSE OF OFFICE: Contrary to Section 139 of the Crimes Act No 44 of 2009.

Particulars of Offence (b)

ANIZ AHMED, on or about the 28th day of March 2012, at Nadi, in the Western Division, being a person employed in the public service, namely a Road Safety Officer of the Land Transport Authority, in abuse of the authority of his office, did an arbitrary act, namely solicited and accepted \$28.00 from one Ajay Nand, which act was prejudicial to the rights of the Land Transport Authority.

- [3] The Appellant pleaded not guilty to the charge (and the alternative charge) and the matter proceeded to trial.
- [4] The hearing in this matter was conducted twice in the Magistrate's Court of Nadi. The first hearing was held on 11 February 2013. The prosecution called seven witnesses and closed its case. The Appellant made a No Case to Answer application. On 8 May 2013, the Learned Magistrate, Nadi made his ruling on the said application and called for the

Appellant's defence [Vide pages 76 to 84 of the Magistrate's Court Record]. Thereafter, the Learned Magistrate who heard the matter up to that point in time got promoted to the High Court.

- [5] As such, on 19 August 2014, the Appellant made an application for Trial De Novo. On 25 May 2015, the Learned Magistrate ruled in favour of the Appellant and held that a Trial De Novo should be conducted [Vide pages 218 to 223 of the Magistrate's Court Record].
- [6] After many adjournments, due to various reasons, on 10 November 2020, the fresh hearing commenced and continued on 11 November 2020. The prosecution led the evidence of 4 witnesses, Ruci Mainewa (Human Resource Officer of the Land Transport Authority-LTA), the Complainant, Ajay Nand (who is a Bank Employee), Semi Ravouvou (Enforcement Officer at Nadi Town Council) and Mohammed Iqbal (the Investigating Officer from FICAC) [Vide pages 1484 to 1507 of the Magistrate's Court Record].
- [7] At the end of the case for the prosecution, on 11 November 2020, the Appellant again made a No Case to Answer application [Vide page 1505 of the Magistrate's Court Record].
- [8] It must be stated that all the evidence in the case, was heard before the Learned Magistrate, Mr. Peni Dalituicama.
- [9] Thereafter, the matter was transferred before the Learned Magistrate, Mr. Samuela Qica. On 5 November 2011, it is recorded that both parties agreed to adopt the evidence already adduced in the matter [Vide page 1509 of the Magistrate's Court Record].
- [10] On 21 January 2022, the Learned Magistrate Mr. Samuela Qica ruled that there was a case for the Appellant to answer [Vide page 1524 of the Magistrate's Court Record]. The Appellant exercised his right to remain silent [Vide page 1526 of the Magistrate's Court Record].
- [11] On 24 February 2023, the Learned Magistrate delivered his judgment finding the Appellant guilty of the charge of Bribery and convicting him of the charge. On 28 April 2023, the Learned Magistrate pronounced the sentence sentencing the Appellant to 6 months imprisonment.

- [12] Aggrieved by the said Order, on 24 May 2023, the Appellant filed a timely appeal in the High Court. The Petition of Appeal filed is only in respect of the conviction.
- [13] This matter was taken up for hearing before me on 27 March 2024. The Appellant and the Learned State Counsel for the Respondent were heard. Both parties filed written submissions, and referred to case authorities, which I have had the benefit of perusing.
- [14] As per the Grounds of Appeal filed by the Appellant the Grounds of Appeal against conviction are as follows:

Grounds of Appeal against Conviction

GROUND 1

That the Learned Magistrate erred in the law and in fact whether a guilty verdict is unreasonable or inconsistent or cannot be supported having regards to the evidence.

GROUND 2

That the Learned Trial Magistrate erred in law for not considering the length of my case in which my Constitutional Rights were taken away. Altogether three (3) Magistrates heard my case in 3 different times. Under Section 14 (2) (g) is that every person charged with an offense has the right to have the trial begin and conclude without unreasonable delay. The Court proceedings in 2012 to 2023 which was quite a length of time.

GROUND 3

FICAC charged me at two different times:

1. Abuse of Office and Bribery.
2. Attempting to Pervert the Course of Justice.

Abuse of Office and Attempting to Pervert the Course of Justice was dismissed by the Court. In this case, the Principal complainant Rizwan Khan withdrew the charges against me as he had some personal grudges against me. In which Rizwan Khan was not called to give evidence in the final hearing. Main complainant Rizwan Khan was not called for material evidence.

GROUND 4

Prosecution witness Ajay Nand lied on oath saying that he gave me \$28.00 cash. Ajay Nand said in his statement that is said to him 'KUCH SOCH LO' it means to think about

something in general but not money. I also denied the full allegation refer Q. 76 in the caution interview.

GROUND 5

The case was under Nadi Magistrate's Court and transferred to Ba Magistrate's Court which was very unfair to me travelling to Ba where I was unemployed from 2012 to 2023 till to date.

GROUND 6

That the Learned Magistrate erred in Law in failing to consider the correct charge against the accused.

The Law and Analysis

[15] Section 246 of the Criminal Procedure Act deals with Appeals to the High Court (from the Magistrate's Courts). The Section is re-produced below:

"(1) Subject to any provision of this Part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrates Court in any criminal cause or trial to which he or she is a party may appeal to the High Court against the judgment, sentence or order of the Magistrates Court, or both a judgement and sentence.

(2) No appeal shall lie against an order of acquittal except by, or with the sanction in writing of the Director of Public Prosecutions or of the Commissioner of the Independent Commission Against Corruption.

(3) Where any sentence is passed or order made by a Magistrates Court in respect of any person who is not represented by a lawyer, the person shall be informed by the magistrate of the right of appeal at the time when sentence is passed, or the order is made.

(4) An appeal to the High Court may be on a matter of fact as well as on a matter of law.

(5) The Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor, other than a criminal cause or matter instituted and conducted by the Fiji Independent Commission Against Corruption.

(6) Without limiting the categories of sentence or order which may be appealed against, an appeal may be brought under this section in respect of any sentence or order of a magistrate's court, including an order for compensation,

restitution, forfeiture, disqualification, costs, binding over or other sentencing option or order under the Sentencing and Penalties Decree 2009.

(7) An order by a court in a case may be the subject of an appeal to the High Court, whether or not the court has proceeded to a conviction in the case, but no right of appeal shall lie until the Magistrates Court has finally determined the guilt of the accused person, unless a right to appeal against any order made prior to such a finding is provided for by any law."

[16] Section 256 of the Criminal Procedure Act refers to the powers of the High Court during the hearing of an Appeal. Section 256 (2) and (3) provides:

"(2) The High Court may —

(a) confirm, reverse or vary the decision of the Magistrates Court; or

(b) remit the matter with the opinion of the High Court to the Magistrates Court; or

(c) order a new trial; or

(d) order trial by a court of competent jurisdiction; or

(e) make such other order in the matter as to it may seem just, and may by such order exercise any power which the Magistrates Court might have exercised; or

(f) the High Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the Appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(3) At the hearing of an appeal whether against conviction or against sentence, the High Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the Magistrates Court and pass such other sentence warranted in law (whether more or less severe) in substitution for the sentence as it thinks ought to have been passed."

The Grounds of Appeal against Conviction

GROUND 1

[17] This Ground of Appeal against Conviction is that the Learned Magistrate erred in the law and in fact whether a guilty verdict is unreasonable or inconsistent or cannot be supported having regards to the evidence.

- [18] The Appellant was charged in the Magistrate's Court of Nadi with one count of Bribery, contrary to Section 4 (2) (a) of the Prevention of Bribery Act and an alternative count of Abuse of Office, contrary to Section 139 of the Crimes Act. He was found guilty and convicted of the count of Bribery, contrary to Section 4 (2) (a) of the Prevention of Bribery Act.
- [19] The Learned Magistrate's Judgment is found at pages 325 to 339 of the Magistrate's Court Record. I find that the Learned Magistrate has correctly outlined the elements of the offence of Bribery, contrary to Section 4 (2) (a) of the Prevention of Bribery Act [At pages 327 and 328 of the Magistrate's Court Record]. He has duly summarized the evidence of the four prosecution witnesses led during the trial [From pages 329-330 of the Magistrate's Court Record]. He has then substantially analysed the evidence in relation to the said elements of the offence [From pages 330-339 of the Magistrate's Court Record]. Accordingly, the Learned Magistrate has found the Appellant guilty of the charge and convicted him.
- [20] I find that the Learned Magistrate has duly considered all the evidence prior to arriving at his conclusion that the Appellant was guilty of the charge. The Learned Magistrate's finding cannot be considered as unreasonable or inconsistent. For the aforesaid reasons, I find that the said Ground of Appeal against the Conviction is without merit and should be rejected.

GROUND 2

- [21] This Ground of Appeal against Conviction is that the Learned Magistrate erred in law when he failed to consider the delay in the conclusion of this case.
- [22] In terms of Section 14 (2) (g) of the Constitution of Fiji 2009 (Constitution), it is stated that every person charged with an offence has the right to have the trial begin and conclude without unreasonable delay.
- [23] In this case, the date of offending is 28 March 2012 and the Appellant was charged in the Magistrate's Court of Nadi on or about 29 June 2012. The judgment in the case was delivered on 24 February 2023 and sentence passed on 28 April 2023.

[24] I concede that there has been a long delay in the conclusion of this matter. However, when going through the record of the proceedings in this case, it is clear that the delay was not only caused due to the change in Magistrates hearing the case, but that the Appellant too has contributed substantially to the said delay in the conclusion of the proceedings.

[25] Accordingly, I find that the said Ground of Appeal against the Conviction is also without merit.

GROUND 3

[26] This Ground of Appeal against Conviction is that a primary witness Rizwan Khan was not called by the prosecution to give evidence in the final hearing.

[27] It is trite law that the defence cannot dictate to the prosecution on the charges it chooses to prosecute against the Appellant and as to how the prosecution should conduct the trial. The prosecution is at liberty to call any number of witnesses it considers relevant and material for the proving of the charge against the Appellant beyond reasonable doubt.

[28] If the Appellant so wished, he was at liberty to call the said Rizwan Khan as a defence witness, when his defence was called. However, the Appellant exercised his right to remain silent.

[29] The Learned Magistrate has addressed this issue in his judgment as follows [see page 338 of the Magistrate's Court Record]:

"Furthermore, issues were raised too that some potential witnesses were not called by the prosecution. It was argued that had these witnesses testified, they would have created a reasonable doubt in the prosecution case. I respectfully disagree with this proposition because it is the prerogative of the prosecution to decide which witnesses to testify or otherwise. I don't see any prejudice or miscarriage of justice as the accused had counsel and those witnesses were available for which he had every right to call them to testify for the defence case subsequent to the conclusion of the prosecution case. The accused had exercised his right to remain silent and not call any witness....."

[30] Therefore, I am of the opinion that this Ground of Appeal against the Conviction is without merit and should be rejected.

GROUND 4

[31] This Ground of Appeal against Conviction is that prosecution witness Ajay Nand lied on oath saying that he gave the Appellant \$28.00 cash. Ajay Nand said in his statement that the Appellant said to him 'KUCH SOCH LO' which means to think about something in general but not money. The Appellant also denied the full allegation as stated in Q. 76 in the caution interview.

[32] This issue is in relation to the evidence in the case and has already been addressed in dealing with the first Ground of Appeal against Conviction. The Learned Magistrate too has duly considered the matter by stating that the said witness Ajay Nand maintained his version of events regarding what transpired. He did not waiver and was consistent throughout his evidence.

[33] Therefore, I am of the opinion that this Ground of Appeal against the Conviction is also without merit.

GROUND 5

[34] This Ground of Appeal against Conviction is that although this case was a matter instituted in the Nadi Magistrate's Court it was transferred to Ba Magistrate's Court which was very unfair to the Appellant since he had to travel to Ba whilst he was unemployed.

[35] It is my opinion that this was an administrative matter that should have been brought to the attention of Court by the Appellant, through his Counsel, during the course of the proceedings. He cannot now take up this matter as a Ground of Appeal against Conviction.

[36] Therefore, I am of the opinion that this Ground of Appeal against the Conviction too is without merit.

GROUND 6

[37] This Ground of Appeal against Conviction is that the Learned Magistrate erred in Law in failing to consider the correct charge against the Appellant.

[38] This issue too has already been addressed in dealing with the first Ground of Appeal against Conviction. As stated before, the Learned Magistrate has correctly outlined the elements of the offence of Bribery, contrary to Section 4 (2) (a) of the Prevention of Bribery Act [At pages 327 and 328 of the Magistrate's Court Record] and has duly analysed the evidence led at the trial in relation to the said elements of the offence.

[39] Therefore, I am of the opinion that this Ground of Appeal against the Conviction too is without merit and should be rejected.

Conclusion

[40] Accordingly, I conclude that this Appeal should stand dismissed and the conviction and sentence be affirmed.

FINAL ORDERS

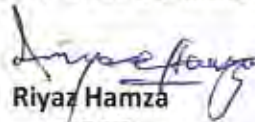
[41] In light of the above, the final orders of this Court are as follows:

1. Appeal is dismissed.
2. The conviction entered by the Learned Magistrate, Magistrate's Court of Nadi in Criminal Case No. 636 of 2012 is affirmed.



AT LAUTOKA

This 4th Day of June 2024


Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

Solicitors for the Appellant:
Solicitors for the Respondent:

Appellant Appears in Person.
**Office of the Fiji Independent Commission Against
Corruption, Suva.**