

IN THE MAGISTRATES COURT OF FIJI
AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. 511 of 2014

STATE

-v-

NAZIM HUSSEIN

Appearances: Constable V. Chand *for the State*
Mr. H. Robinson, *of counsel* instructed by Tadrau Law

Date of Sentence Hearing: 24 May 2019
Date of Sentence: 31 May 2019

SENTENCE

1. You were convicted after trial for **Breach of Domestic Violence Restraining Order** contrary to section 77 of the **Domestic Violence Act 2009**.
2. This Court *albeit* differently constituted had issued an interim Domestic Violence Restraining Order against you pursuant to section 27 and section 35 of the **Domestic Violence Act 2009** on 16 January 2014.
3. According to that order you were prohibited from engaging in any of the following conduct against Ms. Shamida Nisha, your wife:
 - (1) Physically assaulting or sexually abusing her;
 - (2) Threatening to physically assault or sexually abuse her;
 - (3) Damaging or threatening to damage any property belonging to her;
 - (4) Threatening, intimidating or harassing her;
 - (5) Behaving in an abusive, provocative or offensive manner toward her;
 - (6) Encouraging any person to engage in this prohibited behaviour against her.
4. Moreover, pursuant to section 35 of the **Domestic Violence Act 2009**, she was permitted to remain without restriction in your marital home if she wished and you were restrained from prohibiting her from doing so.
5. On 23 October 2014, you picked up a 4 – foot burner stove and threw it to the floor. You then threw the food that Ms. Nisha had cooked to the floor and you verbally abused her, calling her “*katiyu*”, “*bajaru*” and “*maichod*” – “*bitch*”, “*prostitute*” and a “*motherfucker*.” This happened in front of your children and your actions reduced her to tears. That stove, she testified, she had purchased with her own money.

Maximum Penalty

6. On a first offence of **Breach of Domestic Violence Restraining Order** the maximum penalty is a fine of \$1000.00 and/or imprisonment for 12 months.

Aggravating Factors

7. It was a violent and virulent attack on your spouse and it was an attack that happened in front of children. Make no mistake, the fact that you did not physically harm her does not make what you did any less of an attack.
8. Moreover, you targeted food that she had prepared and a burner she had purchased and your words were clearly meant to demean and humiliate.
9. You were abusive and vile and in doing what you did, you showed yourself to be a bully and coward.

Mitigating Factors

10. You are 48 years old. You have 2 children and 2 grandchildren who stay with you. You work as a civil engineer and you earn \$500.00 a week, your counsel submits.

Sentencing

11. I pick a starting point of 6 months. I increase this by 6 months for the verbal abuse, the physical damage and the emotional harm you undoubtedly caused Ms. Nisha and your children on that day.
12. Your sentence is now 12 months. I decrease your sentence nominally by 1 month for your personal circumstances. Your sentence is now 11 months.
13. Moreover, you are a person of previous good character. I reduce your sentence by 2 months for this factor. Your sentence is now 9 months imprisonment.
14. You have shown no evidence of remorse. I decline to suspend your sentence.

Result

15. In the result, and for the reasons set out above, I convict you of **BREACH OF DOMESTIC VIOLENCE RESTRAINING ORDER** contrary to section 77 of the **DOMESTIC VIOLENCE ACT 2009** and I sentence you to imprisonment for a term of 9 months.
16. In addition, I issue a permanent standard non-molestation order pursuant to section 27 of the **DOMESTIC VIOLENCE ACT 2009** to protect **Shamida Nisha** from you for the rest of your natural lives.
17. **28 days to appeal.**



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Seini K Puamau
Resident Magistrate



Dated at Labasa this 31st day of May 2019