

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No.32 of 1978

BETWEEN:

MOHAMMED SHAMEEM s/o Mohammed
Munif

Appellant

- and -

R E G I N A

Respondent

Mr. S.R. Shanker, Counsel for the Appellant
Mr. D. Williams, Counsel for the Respondent

JUDGMENT

The appellant was on the 27th day of February 1978 convicted of careless driving and fined \$40.00 and his licence was endorsed.

He appeals on the ground that the proceedings were a nullity because they were instituted under S.81 C.P.C. which can be adopted for offences punishable by fine and/or imprisonment for not more than 3 months, but on a conviction for careless driving the defendant may be disqualified from driving.

The appellant argues that disqualification from driving cannot possibly be embraced by a provision which allows for a fine or disqualification.

S.81 C.P.C. reads as follows:-

"81.(1) Notwithstanding the other requirements of this Code, it shall be lawful for any police officer to institute proceedings by and to serve personally upon any person who is reasonably suspected of having committed any offence to which this section applies a notice in the prescribed form requiring such person to attend court in answer to the charge stated thereon at such place and on such date and time (not being less than ten days from the date of such service) as shown on such notice or to appear by barrister and solicitor or to enter a written plea of guilty:"

"Provided that such notice shall be served not later than fourteen days from the date upon which the offence is alleged to have been committed.

(2) A notice served in accordance with the provisions of the last preceding subsection shall for all purposes be regarded as a summons issued under the provision of this code and, in the event of a person upon whom such a notice has been served failing to comply with the requirements of the notice, a warrant for the arrest of such person may be issued notwithstanding that no complaint has been made on oath.

(3) A copy of such notice shall be signed by the police officer preferring the charge and shall be placed before the court by which the charge is to be heard at least seven days before that time fixed for such hearing.

(4) This section shall apply to all offences punishable by fine or by imprisonment with or without a fine, for a term not exceeding three months.

(5) Nothing in this section shall be deemed to prevent the institution of proceedings under the other provisions of this Code."

The offence of which the appellant was convicted is in addition to fine and/or imprisonment punishable by having his licence endorsed and by disqualification. Subsection (4) of S.81 unfortunately limits the use of the procedure set out in subsection (1) to offences punishable by fine or imprisonment. It is silent about offences carrying such punishments as disqualification from driving and it is beyond the powers of the judiciary to include them. The C.P.C. is a penal statute and its provisions must be construed strictly and not against H.M. subjects.

expressed

I accordingly follow the views/by Sir C.H. Brant, Chief Justice, in The D.P.P. v. Bissun ^{expressed} ~~crased~~ in Cr.App. 10/74 delivered on 10/2/74 that this is a fundamental error which goes to jurisdiction. The section limits the offences for which this procedure can be adopted to those set out in subsection (4) and the courts are not empowered to entertain the use of that procedure for any other category of offences.

I upheld the appellant's contention that the proceedings in the Magistrate's Court were a nullity.

(3)

The conviction is quashed and the sentence is set aside. The fine, if paid, shall be refunded.

LAUTOKA,
16th June, 1978.

(sgd.) J.T. Williams,
JUDGE

Messrs. G.P. Shankar & Co., for the Appellant
Director of Public Prosecutions for the Respondent

Date of Hearing: 2nd day of June, 1978.