

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA (CRIMINAL DIVISION)

CR NO. 135/2002

POLICE

v

Sergeant T Howard for Police

Mr Miles for Defendant

Date: 24 June 2002

DECISION OF GREIG CJ

This is an application made under the Criminal Procedure Act for the withdrawal of an information. The Police make the application. The matter requires the leave of the Court before it can be withdrawn.

This is a "serious charge." It is a charge of indecent assault against a man aged about 27; the complainant is a girl aged about 17. The allegations are that the complainant says that certain events occurred on or about the night of the 6th of April 2002 at a place where she spent the night with a friend, the friend's boyfriend and the complainant.

The complainant made a complaint to the police and referred to the fact that this had occurred in a bedroom where the other two persons were present. The complainant said that she had made an early complaint to her friend who she awakened as she alleged, at the end of or during the incident. Following

that the accused was interviewed and the police then laid an information on the 8th of April some two days after the event. The accused appeared on a number of occasions. The two other persons present on the occasion were interviewed by the police and a note of their statement was taken. Some little time later counsel for the accused interviewed those two persons and obtained statements from them. Those statements if accepted would appear to provide some evidence in favour of the defence. The police in effect have decided that with this there is insufficient evidence to prosecute the case and on that basis the matter is brought before me.

Clearly the matter is not ready to proceed at this time. The police have taken no steps to prepare deposition statements or take any other of the usual steps in preparation of a trial under the Criminal Procedure Act.

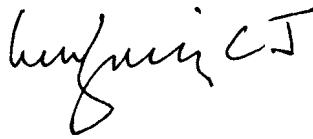
It is of course not just for the police to decide not to prosecute a case particularly one of this nature. I have some misgivings about the application that is made to me but with reluctance and in the knowledge that this does not close the matter because the matter can be brought up again, I have decided to acquiesce in the application and to grant leave as applied for. The information may now be formally withdrawn and there will be an order for suppression of the name of the complainant and anything that might lead to her identity.

Mr Miles applies for costs in this matter. S46 as I have mentioned provides that on the withdrawal of an information the Court may award to the defendant such costs as it thinks reasonable and any costs awarded may be recovered as if the costs were awarded on a conviction. In this case it appears that the police did not decide to withdraw the case until last Friday. I was aware of that but it seems the Police took no steps to endeavour to notify the accused or his counsel of that decision. Mr Miles advises me that he had prepared in anticipation that this trial would proceed; that he has obtained the witnesses and the presence of them and of course the accused

is present as well. The accused in any event was bound to appear here to surrender to his bail.

In the event Mr Miles would have had to be present as well but he has had this further preparation and it seems to be that it is reasonable in all the circumstances that there should be an award in a relatively small amount for the work that he has had to undertake unnecessarily in the circumstances of this case. There will be an order therefore for costs of \$200 in favour of the accused and his counsel. I make no order as to witnesses expenses or other expenses involved in the matter.

I am going to make an order not only for the suppression of the name of the complainant but for the suppression of the name of the accused and anything that might reveal the accused's identity.


CHIEF JUSTICE