

IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No. 63 of 1982

Between:

PARSHU RAM Appellant
s/o Pardesi

and

REGINAM Respondent

V. Kalyan for Appellant.
D. Fatiaki and G. E. Leung for Respondent.

Date of Hearing: 28 February, 1983.

Date of Judgment: 23rd March, 1983.

JUDGMENT OF THE COURT

Quilliam J.A.

This is an appeal on a point of law only.

The appellant was charged in the Magistrate's Court that on the 20th February, 1982, at Lautoka he assaulted Special Constable No. 144 Mohammed Jan in the due execution of his duty. The charge was laid under S. 247(b) of the Penal Code, Cap. 17, which makes it an offence for any person to assault a police officer in the due execution of his duty. It was acknowledged that Mohammed Jan was a duly appointed Special Constable,

but the Magistrate held that he was not a police officer and so the charge failed and the appellant was acquitted.

The Director of Public Prosecutions thereupon appealed to the Supreme Court. The appeal was allowed and there was a direction that the trial continue before the Magistrate. The appellant now appeals from that decision.

Section 247(b) of the Penal Code provides:

"Any person who -

(b) Assaults...any police officer in the due execution of his duty... is guilty of a misdemeanour..."

The difficulty arises from the absence from the Penal Code of any definition of the expression "police officer". There is a definition of that expression in S. 2 of the Interpretation Act, Cap. 7, namely that it shall bear the meaning assigned to it by the Police Act, Cap. 85. Section 2 of the Police Act defines "police officer" as meaning "any member of the Force", and that section defines "Force" as meaning the Royal Fiji Police Force.

The argument advanced by Mr. Kalyan on behalf of the appellant, and the argument which had found favour with the Magistrate, was that those provisions we have set out meant the matter was to be resolved by the provisions of the Police Act, and in particular that upon the proper construction of that Act a special constable cannot be regarded as a member of the Royal Fiji Police Force. The contention was that special constables are treated in the Police Act as entirely distinct from the members of the Royal Fiji Police Force and do not therefore come within the expression "police officer".

The argument offered by Mr. Fatiaki for the respondent, adopting the reasoning of the learned Judge

in the Supreme Court, was that there is no express statutory provision defining police officer for present purposes, and that accordingly it was necessary to turn to the provisions of the English law. That argument was based upon S. 3 of the Penal Code, Cap. 7, which provides:

"3. This Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and, except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith."

It was Mr. Fatiaki's contention that the effect of that section was to mean that neither the Interpretation Act nor the Police Act could have any bearing on the meanings to be attributed to expressions used in the Penal Code, and that accordingly the Court should give to such expressions the meanings attaching to them in the English criminal law. If that was so, then it was said that it became apparent the expressions "police officer", "police constable", "constable" and "special constable" were not terms of art but were each synonymous with the other. Mr. Fatiaki developed his argument under a number of heads:

1. The first was based upon the long title to the Police Act, namely:

"An Act to make better provision for the organization, discipline, powers and duties of the police force and for matters incidental thereto."

It was said that it was apparent the Police Act envisaged a Police Force comprised both of regular or permanent constabulary, known as "the Force" (and given the name of the Royal Fiji Police Force), and also another body called the Special Constabulary.

2. A second head was based upon S. 3 of the Penal Code which we have already set out. It was argued that the Penal Code is, as the name suggests, a code and that it should be interpreted only in the light of its own terms. Accordingly the injunction in S. 3 to apply the meanings used in the English criminal law must be obeyed.
3. As an extension of the second argument it was contended that it was wrong in principle to use a subsequent Act for the purpose of interpreting an earlier Act.

We have given careful consideration to these submissions but we find ourselves unable to accept them. We consider they overlook the general scheme of the Fijian Statute law.

It was sought, in effect, to brush aside the provisions of the Interpretation Act. Not only do we feel unable to do that; we regard it as fundamental to the approach which must be made to the interpretation of statutes in this country to give full weight to that Act. What it says, in S. 2, in the clearest of terms, is that in the Interpretation Act itself and in "every other written law" the words and expressions set out shall have the meanings assigned to them in S. 2, and moreover that this shall be so whether the other written law was enacted before or after the Interpretation Act. There is, however, a qualification. Those meanings are not to apply if there is something in the subject or context inconsistent with such construction, or if the other written law in question otherwise expressly provides. This is a statutory provision of wide and overriding application. If we are to adopt the argument advanced to us by Mr. Fatiaki then we must accept that, notwithstanding the clear words of S. 2, there may yet be "other written laws" to which S. 2 should not apply.

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It is true that S. 3 of the Penal Code uses somewhat similar language to S. 2 of the Interpretation Act when it provides that expressions in the Code are presumed to have the meanings attached to them by the English criminal law "so far as is consistent with their context, and, except as may be otherwise expressly provided." If the reference in S. 3 to "otherwise expressly provided" is to be regarded as relating only to the Penal Code itself then it may well be that one is directed to the English criminal law. We do not accept, however, that this is so. We consider that "otherwise" is a word of wide application and must include the Interpretation Act in which, of course, there is an express provision. Moreover, S. 3 is not in such wide terms as S. 2 of the Interpretation Act, and there is nothing in it which suggests it was intended to be an exception to that Act. We are satisfied that the Interpretation Act was intended to apply to all other statutes and that it provides a dictionary for expressions contained in S. 2 wherever those expressions may appear and so long only as the definitions given to them do not conflict with either of the qualifications referred to. An indication of the way in which S. 3 of the Penal Code is to be applied is to be found in the decision of this Court in Parshu Ram v Reginam (1967) 13 F.L.R. 138. That was a case involving a charge of attempting to conspire. The facts are of no relevance for present purposes but, in the majority judgment of the Court, there is reference to the fact that the word "conspire" is not defined in the Code. The Court therefore applied the principles contained in the English criminal law. It is to be observed that there was no definition of "conspire" in the Interpretation Act, and so the situation which arises in the present case did not arise there.

Once the basic principle is recognized then one is taken directly to the Police Act, because the Interpretation Act specifies that the expression "police officer" is to have the meaning assigned to it by that Act.

There is nothing in the Penal Code or the Police Act which expressly provides that the expression "police officer" shall have a meaning otherwise than as specified in the Interpretation Act. It accordingly becomes a question of considering whether there is something in the subject matter or context which is inconsistent with the construction given in the Interpretation Act.

It is necessary now to consider the scheme and effect of the Police Act. S. 3 provides:

"There shall continue to be established in Fiji a Police Force to be called the Royal Fiji Police Force."

The reference to continuation implies that there is an earlier provision, and it is to be found in the Police Ordinance No. 24 of 1939, S. 3 of which provides:

"There is hereby established in the Colony a Police Force to be called the Fiji Police Force."

The present Act has simply perpetuated the same Force but given it the new name of the Royal Fiji Police Force.

Section 2 of the Police Act defines "Force" as meaning the Royal Fiji Police Force, and S. 4 provides that the Force shall consist of "such ranks as may be prescribed." Those ranks are prescribed in the subsidiary legislation under the three general categories of Gazetted Officers, Inspectorate Officers and Subordinate Officers. Section 4 is of some significance for present purposes because, if it had been intended to include special constables as members of the force, as is basic to the appellant's argument, then one might expect to have found some indication of it in that section.

The Special Constabulary are established and provided for in Part VIII of the Police Act. Section 53

places the Special Constabulary under the command of the Commissioner of Police and provides that its members shall be known as special constables and shall have such ranks as may be assigned to them by the Commissioner. The use of the term "special constable" throughout Part VIII as distinct from the term "constable", which is one of the prescribed ranks of Subordinate Officers, is of further significance. Sections 54 and 55 of the Police Act are of particular relevance for present purposes:

"54. Special constables may be employed with the Force wherever it is necessary to augment the Force for the preservation of the public peace and the prevention and detection of crime, and may be paid from public funds at such rates as may be prescribed.

55. (1) Every special constable while on duty shall have the same powers, privileges, including the carrying of arms, and protection, and shall be liable to perform the same duties as a police officer.

(2) Every special constable shall be subordinate to the same authorities as a police officer and to special constables of superior rank to himself."

The scheme of the Act is, we think, to draw a clear distinction between the Royal Fiji Police Force and the Special Constabulary. It has been found convenient to apply to special constables while on duty certain of the provisions of the Act which relate to members of the Force, but throughout the Act the distinction is carefully preserved. While, for instance, a special constable when on duty is given, by S. 55(1), the same powers, privileges and protection as a police officer, and is liable to perform the same duties, he is not subject to the same restrictions. Section 16 prohibits a police officer from engaging in any other employment or taking part in political activities. It is not surprising that the special constable, whose employment as such is by its nature part-time only, is not made subject to a similar restriction. Section 17(2) provides that every police officer shall be deemed to be on duty at

all times, and this again cannot sensibly apply to a special constable. Without setting them out in detail there are various other provisions in the Act which draw similar distinctions.

We observe in particular that a special constabulary was first established in the Police Ordinance No. 24 of 1939, but went out of existence in 1955 when the Police Ordinance No. 5 of 1955 (Cap. 55) did not repeat the provisions which related to it. Those provisions were then revived by the Police (Amendment) Ordinance No. 35 of 1957 and so the special constabulary was re-established. This sequence lends force to the view we have formed that the special constabulary was always intended to be something different from the regular or permanent force.

It follows from what we have said the expression "police officer" as it is used in S. 247(b) of the Penal Code cannot be made to apply to a special constable. We should, perhaps, observe, without necessarily deciding the matter, that a charge may well have been laid in the present case under S. 247(e) of the Penal Code which makes it an offence to assault any person "on account of any act done by him in the execution of any duty imposed on him by law."

It must be acknowledged that the decision to which we have come results in some anomalies, but that is not a reason for adopting a construction which cannot otherwise be sustained. It may, of course, be a reason which could prompt the legislature to consider amendments to the law, but that is not a matter for this Court.

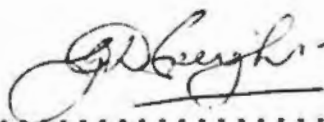
Having regard to the decision we have reached it is unnecessary for us to traverse the careful and detailed submissions made to us by Mr. Fatiaki.

The appeal is allowed and the decision of the Magistrate is restored.



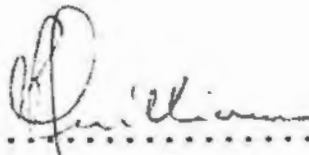
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Vice President



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Judge of Appeal



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Judge of Appeal