

IN THE FIJI COURT OF APPEAL
Criminal Appeal No. 70 of 1986

Between:

JONACANI SAU

Appellant

- and -

R E G I N A M

Respondent

Mr. Tevita Fa for the Appellant
Mr. I. Mataitoga for the Respondent

Date of Hearing: 6th March, 1987

Delivery of Judgment: 13th March, 1987

JUDGMENT OF THE COURT

Mishra, J.A.

The appellant was charged before the Resident Magistrate Navua with causing death by dangerous driving. This, under the Criminal Procedure Code (Code), is an offence not triable by a Magistrate unless the accused gives his consent. The appellant having declined to give consent the Magistrate held a preliminary inquiry and committed the appellant to the Supreme Court for trial. On 21st April, 1986, the Director of Public Prosecutions (Director), in exercise of his powers under section 247 of the Code returned the depositions to the Magistrate with a direction to try the case without the consent of the accused. The latter held that the direction under

section 247 could not confer additional powers upon him and that he had no jurisdiction to try the appellant unless he consented to such a trial.

The Director appealed to the Supreme Court. Rooney J. allowed the appeal stating:-

" I am satisfied, therefore, that on a true construction of section 247, the Director of Public Prosecutions has the right to remit suitable cases back to the magistrate's court for trial without the consent of an accused. "

The appellant now appeals against that decision.

The appellate Judge also made certain obiter statements on the nature of depositions sent to the Supreme Court but these were not a subject of the appeal below and do not fall for consideration here.

The sole question before this court is the same as in the court below: does the exercise by the Director of his powers under section 247 of the Code give a magistrate jurisdiction to try an offence which he would otherwise not have without the accused's consent?

Powers of the Courts are contained in sections 4(1) and 5 of the Code:-

"4.(1) Subject to the other provisions of this Code, any offence under the Penal Code may be tried by the Supreme Court, or by any magistrate by whom such offence is shown in the fifth column of the First Schedule to be triable:

Provided that where so stated in the fifth column of the First Schedule the offence shall not be tried by a magistrate unless the consent of the accused to such trial has first been obtained.

5.(1) Any offence under any law other than the Penal Code shall, when any court is mentioned in that behalf in such law, be tried by such court.
(Cap.17)

(2) When no court is so mentioned, it may, subject to the proviso to subsection (1) of section 4 and the other provisions of this Code, be tried by the Supreme Court, or by any magistrate by whom such offence is shown in the fifth column of the First Schedule to be triable. "

Section 4(2) deals with the extension of a magistrate's jurisdiction in special cases and is irrelevant to this appeal as no extension was applied for or granted.

A preliminary inquiry is held under section 224 of the Code which is in the following terms:-

"224. Whenever any charge has been brought against any person of an offence not triable by a magistrates' court or as to which the magistrate is of opinion that it ought to be tried by the Supreme Court or where an application in that behalf has been made by a public prosecutor a preliminary inquiry shall be held, according to the provisions hereinafter contained, by a magistrates' court, locally and otherwise competent.
(Substituted by 26 of 1945, s.4). "

This section envisages three situations -

- (a) where the magistrate has no jurisdiction;
- (b) where he has jurisdiction but considers the case to be suitable for trial by the Supreme Court, and
- (c) where he has jurisdiction but the Director applies for trial by the Supreme Court.

Situation (a) is grounded in jurisdiction; (b) and (c) in suitability. A magistrate lacks jurisdiction in two

circumstances viz (i) where, in the First Schedule to the Code, a case is not listed as triable by a magistrate and (ii) where a case is listed as triable by a magistrate only with the consent of the accused and the consent is refused.

Section 247 of the Code reads:-

"247. If, prior to the trial before the Supreme Court, the Director of Public Prosecutions is of the opinion, upon perusing the record of the depositions received by him, that the case is one which may be suitably tried by a magistrates' court on a charge of any offence disclosed by such depositions, he may cause the depositions to be returned to the court which committed the accused person for trial. The Director of Public Prosecutions when causing the depositions to be returned as aforesaid may direct that the accused be tried on any charge which in his opinion is disclosed by the depositions either in addition to or in substitution for the offence upon which the accused was originally committed for trial, and upon receipt of such direction the magistrate shall try the accused accordingly, as if he had not been committed for trial:

Provided that where the charge upon which the accused is so directed to be tried by the committing court is the same as the charge upon which he was committed for trial and the magistrate who takes cognizance of such case after the return of the depositions to the Court is the same as the magistrate who committed the accused for trial, the provisions of subsection (3) of section 235 shall apply."

The words "which may be suitably tried by a magistrates' court" are significant. There can be no doubt that in situations (b) and (c) of a preliminary inquiry described above the Director is the sole arbiter as to suitability. The question then arises: does section 247 of the Code also make him the sole arbiter of venue, jurisdiction or no jurisdiction? The section itself makes no mention of "jurisdiction" or "consent".

The Learned Judge held that the opening words of section 4(1) of the Code "subject to the other provisions of this Code" made that section controllable by section 247 and the words "the magistrate shall try the accused accordingly" in section 247 required the magistrate to try the case, with consent or without consent; in other words whether or not he had jurisdiction under section 4(1).

Counsel for the respondent concedes that, in a suitable case of Manslaughter where the likely sentence would be within his powers, a Magistrate would nevertheless be unable to deal with the case if remitted to him under section 247 of the Code. Why? Because, says counsel, the jurisdiction belongs to the Supreme Court. But so it does in case of Causing Death by Dangerous Driving unless the accused gives his consent to trial by a magistrate. Section 247 makes no distinction between "consent" and "no consent" cases. The words, "that the case is one which may be suitably tried by a magistrates' court on a charge of any offence disclosed by such depositions" (emphasis added), if given their natural meaning, must include consent cases as well as those which lie solely within the jurisdiction of the Supreme Court under section 4(1) of the Code. That would be the logical, though somewhat absurd, result if the words "subject to the provisions of this Code" were so construed as to permit section 247 to control the distribution of, and limitations to, powers contained in section 4(1).

That, in our view, cannot be the correct construction of section 247. In construing any Act of Parliament it is important to keep in mind the purpose of the legislation and, with that in view, to look at the whole Act. The Criminal Procedure Code is a procedural or regulatory piece of legislation. The powers of the courts are contained, at the beginning, in only two sections - 4 and 5. The rest of the provisions - 350 sections in all - lay down the manner in which those powers are to be exercised and to that extent section 4(1) is subject to them. There are restrictions

such as those in section 219 relating to limitation of time for summary trials and there are special prescriptions such as those in section 221 for trial of minor offences, but none of the sections interfere with the extent of jurisdiction laid down in section 4(1).

This, in our view, leads to the inference that in section 247 the meaning of the words "the case is one which may be suitably tried by the magistrates' court" must be confined to suitability where jurisdiction exists, and cannot be extended to jurisdiction itself so as to enlarge it.

The Learned Appellate Judge himself would appear to be speaking of suitability, rather than jurisdiction, when he said:-

" I am of the opinion that this is a case which ought to be dealt with in the magistrate's court. I say this because (a) the facts as disclosed in the written statements presented to the magistrate's court are not complicated and a resolution of the guilt or innocence of the accused should not present any difficulty to a resident magistrate and (b) the state of the list at present pending before the Supreme Court is such that the accused's right to trial within a reasonable time can no longer be guaranteed. "

We are aware of the pressures exerted on the Supreme Court by trifling uncomplicated cases which often prevent serious and important matters from being dealt with expeditiously. This is a feature common to several Commonwealth jurisdictions. Suitability, however, cannot confer jurisdiction; nor can the crowded nature of the Supreme Court calendar. Any redistribution of powers between courts must, in our view, come from an Act of Parliament.

The appeal is allowed and it is ordered that the appellant, unless he consents to trial by a magistrates court, be tried by the Supreme Court.

A. Smith
.....
VICE-PRESIDENT

H. De la
.....
JUDGE OF APPEAL

Samuel
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JUDGE OF APPEAL