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The brief facts are that about 1.30 a.m. on 8th July 1994 a Police Officer found the Appellant in the driver's seat of a motor vehicle belonging to one Tej Ram of Nadi. A Fijian man and lady were inside this vehicle.

A bag containing Indian Hemp was found in the vehicle and more Indian Hemp was found in the tray of the vehicle. The High Court found that the Appellant was in possession of the Indian Hemp and upheld the finding of the lower court.

Before this Court there were two grounds of appeal, first that there was no evidence that the Appellant had possession or control of the prohibited drug or knowledge that it was prohibited and secondly that failure of the Respondent to comply with Section 191 of the Criminal Procedure Code resulted in a miscarriage of justice to the Appellant. In this regard the evidence was that there was short service on the Appellant of the Government Analyst's Report. Section 191 requires notice of at least ten clear days. The Appellant had three days' notice.

Section 22(1) of the Court of Appeal Act (as amended) reads thus:

*"Any party to an appeal from a magistrate's court to the High Court may appeal, under this Part, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only.*

*Provided that no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a magistrate's court."*

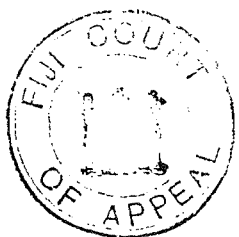
In this Court's view there was sufficient evidence before the lower court for it to find that the Appellant was in possession of the Indian Hemp.

The proviso to Section 191 of the Criminal Procedure Code was enacted for the protection of an accused. In this case as the Appellant was unrepresented and in custody it was unfortunate that the Magistrate did not ensure the proper procedures were followed. However on the totality of the evidence we are satisfied that although there may have been a breach of the proviso, this did not give rise to a substantial miscarriage of justice.

In the result the appeal is dismissed.

*M. Casey*

.....  
Sir Maurice Casey  
Presiding Judge



*G. Ward*

.....  
Justice Gordon Ward  
Justice of Appeal

*John E. Byrne*  
.....  
Justice John E. Byrne  
Judge of Appeal

Solicitors

G.P. Lala on instructions of G.P. Shankar & Co., Ba for the Appellant

Office of the Director of Public Prosecutions, Suva for the Respondent