

**IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA**

APPELLANT JURISDICTION

CRIMINAL APPEAL CASE NO: AAU0012 OF 2010

BETWEEN: JASWANT KUMAR

APPELLANT

AND: FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

RESPONDENT

Counsel:
 Appellant - Mr. R. Chaudhry
 Respondent - Mr. Tennekoon

Date of Hearing: 07/06/2010

Date of Ruling: 15/06/2010

**RULING ON APPLICATION FOR LEAVE TO APPEAL,
AGAINST CONVICTION**

The Appellant was charged for one count of abuse of office contrary to Section 111 of the Penal Code and an alternative count of embezzlement contrary to Section 274(c)(1) of the Penal Code.

After trial the Appellant was convicted for Count No.1 abuse of office and he was convicted of felony and sentenced to 12 months imprisonment. The Appellant seeks leave to appeal against the conviction and sentence.

The main ground of appeal urged by the Appellant is that he was charged for a

misdemeanor, but was convicted of a felony which is a graver offence.

Counsel for FICAC (Respondent), while conceding that the Appellant was charged for a Misdemeanor, but subsequently convicted and sentenced for a felony, submits that learned Trial Judge confirmed that the Assessors opinions were available on the evidence, and that he was also satisfied that the accused abused the authority of his office for gain.

Further, it is submitted that although he was charged for misdemeanor he can be convicted for a felony in terms of Section 111 of the Penal Code.


However, Counsel for the Respondent conceded that the element of personal gain was not mentioned in the charge and confirmed that still accused can be convicted for felony.

The Counsel for Appellant submits that every charge shall contain such particulars as may be necessary for giving reasonable information as to the nature of the offence charged, and as the element of personal gain was not mentioned in the charge he cannot be convicted for a graver offence with which he was not charged.

I find that this is an arguable point which should be decided by the full court and in my opinion the Appellant is entitled to have the judgment of the full court on this proposed grounds of appeal.

I therefore grant the Appellant leave to appeal and the matter will now take its normal course.




Priyantha Fernando
Judge of Appeal
16/06/2010