

IN THE COURT OF APPEAL, FIJI
[On Appeal from the Magistrates Court]

CRIMINAL APPEAL NO. AAU 179 of 2019
[In the Magistrates Court of Nausori Case No. 386 of 2016]

BETWEEN : **RAKESH PRASAD CHARAN**

Appellant

AND : **STATE**

Respondent

Coram : **Prematilaka, JA**

Counsel : **Appellant in person**
: **Mr. R. Kumar for the Respondent**

Date of Hearing : **21 August 2020**

Date of Ruling : **24 August 2020**

RULING

- [1] The appellant had been tried in the Magistrates' Court of Nausori on a single count of possession of illicit drugs contrary to section 5(a) of the Illicit Drugs Control Act 09 of 2004. The particulars of the offence were:

'RAKESH CHARAN and ARTI GEETA NARAYAN on the 09th day of May 2016 at Nausori in the Central Division, were found in possession an illicit drugs namely methamphetamine, weighing 57.5 grams of '

- [2] At the conclusion of the trial, the learned Magistrate had found the appellant guilty and convicted him on 17 September 2019 and sentenced him to 05 years of imprisonment on 04 October 2019.

- [3] The Magistrate's Court had the jurisdiction to try the appellant as charged, convict him and impose the sentence. In **State v Laveta** [2019] FJCA 258; AAU65.2013 (28 November 2019) the Court of Appeal stated:

'[19] Therefore, it is clear from a collective reading of section 5 of the Illicit Drugs Control Act and sections 5(2) and 7 of the Criminal Procedure Act that the Magistrates Court has jurisdiction to try offences created under section 5 of the Illicit Drugs Control Act and impose any sentences upon the accused subject to the limitations prescribed under section 7 of the Criminal Procedure Act. The learned High Court Judge seems to have mixed up the jurisdiction of the Magistrates Court with its powers of sentencing. On the one hand the jurisdiction of the Magistrates Court to try offences under the Crimes Act and upon extended jurisdiction is given in section 4(1)(c) of the Criminal Procedure Act while its jurisdiction to try offences under other laws such as Illicit Drugs Control Act is given in section 5(2). On the other hand the sentencing powers of the Magistrates Court are given in section 7 read with section 4(3) and section 9 of the Criminal Procedure Act.

- [4] Earlier the same position had been articulated by the Court of Appeal in **State v Mata** [2019] FJCA 20; AAU0056.2016 (7 March 2019) (see **State v Wakeham** HAC001 of 2010: 23 February 2010 [2010] FJHC 54) as well.

'[12] Therefore, it is clear from a collective reading of section 5 of the Illicit Drugs Control Act and sections 5(2) and 7 of the Criminal Procedure Act that the Magistrates Court has jurisdiction to try offences created under section 5 of the Illicit Drugs Control Act and impose any sentences upon the accused subject to the limitations prescribed under section 7 of the Criminal Procedure Act.'

- [5] Thus, in this case the Magistrate's Court was not exercising extended jurisdiction vested in it by the High Court by virtue of section 4(2) of the Criminal Procedure Act but its original jurisdiction in trying the case against the appellant. Therefore, his right of appeal is governed by section 246 of the Criminal Procedure Act, 2009 which states *inter alia*

'246. — (1) Subject to any provision of this Part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrates Court in any criminal cause or trial to which he or she is a party may appeal to the High Court against the judgment, sentence or order of the Magistrates Court, or both a judgement and sentence.

- [6] Therefore, any person who is dissatisfied with any judgment, sentence or order of a Magistrates' Court in any criminal cause or trial may appeal to the High Court against the judgment, sentence or order of the Magistrates' Court, or both a judgement and sentence.
- [7] On the other hand, when the Magistrate's Court exercises jurisdiction invested in it by the High Court by virtue of section 4(2) of the Criminal Procedure Act, 2009 ('extended jurisdiction') to try an offence, which, in the absence of such extension of jurisdiction, would be beyond the Magistrate's jurisdiction, the Magistrates' Court is deemed to exercise original jurisdiction of the High Court (subject, of course to the limitation of powers of sentencing) and therefore, the right of appeal is provided in section 21 of the Court of Appeal Act.
- [8] In terms of section 22(1) of the Court of Appeal Act, any party to an appeal from a Magistrate's Court to the High Court may appeal 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. However, no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a Magistrate's court. This is known as the second tier appeal.
- [9] Section 22 (1A) of the Court of Appeal Act deals with similar second tier appeals against sentences passed or imposed by the High Court in its appellate jurisdiction. In other words the first appeal against the decision of a Magistrate's Court given in the exercise of its original jurisdiction (in contrast to extended jurisdiction) should be to the High Court; there is no direct appeal to the Court of Appeal. It is only against the decision of the High Court in appeal that the next appeal *i.e.* the second tier appeal is available to the Court of Appeal subject, of course, to the limitations imposed by section 22 of the Court of Appeal Act.
- [10] In the present case, the Magistrate's Court had exercised original jurisdiction and the appellant's appeal should have been filed in the High Court. The appellant had indeed done so. His timely appeal to the High Court against conviction and sentence recorded in the Magistrate's Court had been filed in person on 15 October 2019 and registered in the High Court under HAA 42 of 2019. He had simultaneously filed the


same appeal papers addressed to the Court of Appeal on 22 October 2019 and it had been registered under AAU 179 of 2019 by the Court of Appeal registry.

- [11] When the appeal was mentioned for the first time on 28 July 2020, the appellant moved to withdraw his appeal and tendered an application in Form 3 of the Court of Appeal Rules to abandon his appeal against conviction and sentence. However, when the application to abandon came up for consideration before two judges of the Court of Appeal on 20 August 2020, the appellant had a change of heart and indicated that he wanted to pursue the appeal. The counsel for the state raised an objection that the appellant's appeal cannot be entertained and should be dismissed, for he had no right of appeal to the Court of Appeal. In order to consider the objection the case was mentioned on 21 August where both parties also filed written submissions.
- [12] However, as already discussed the jurisdiction under section 22(1) of the Court of Appeal Act could be invoked only against a decision of the High Court. In other words, the existence of a decision of the High Court given in the exercise of its appellate jurisdiction is a condition precedent or a *sine qua non* to invoke and cloth the Court of Appeal with jurisdiction under section 22(1) of the Court of Appeal Act.
- [13] Therefore, the appellant could invoke the jurisdiction of the Court of Appeal under section 22(1) of the Court of Appeal Act only after the High Court decision on his appeal HAA 42 of 2019. Thus, the purported appeal registered under AAU 179 of 2019 is null and void *ab initio*. The Court of Appeal is devoid of jurisdiction and also suffers from patent lack of jurisdiction to entertain an appeal from the decision of the High Court under section 22(1) of the Court of Appeal Act until the High Court gives a decision in HAA 42 of 2019.
- [14] In the circumstances, the proceedings in AAU 179 of 2019 are hereby terminated and AAU 179 of 2019 is *pro forma* dismissed.

Order

1. Proceedings in AAU 179 of 2019 are terminated
2. AAU 179 of 2019 is *pro forma* dismissed.




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Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL