

IN THE HIGH COURT OF FIJI
AT SUVA

APPELLATE JURISDICTION

HIGH COURT CRIMINAL APPEAL CASE NO: HAA 014 OF 2010

CRIMINAL CASE NO.: 1156 OF 2009

BET WEEN: ROHIT PRASAD TRIVEDI

APPELLANT

AND: STATE

RESPONDENT

Counsel: Applicant - Mr M. Raza

Respondent - Mr D. Toganivalu

Date of Hearing: 30/03/2010.

Date of Ruling: 01/04/2010.

R U L I N G

This is an appeal against the ruling on no case to answer by the learned Magistrate Suva on 4/12/2009. The learned Magistrate found that the 1st accused (Appellant) has a case to answer and against that ruling this appeal is made.

On the day of the hearing the Counsel for the Appellant brought to the notice of the court the relevant Sections of the Criminal Procedure Decree of 2009 and moved from court for a ruling on whether this order of the learned Magistrate on no case to answer on the Appellant was appealable or not. Counsel for Respondent (State) agreed with the application of the Appellant as the relevant Sections of the Criminal Procedure Decree of 2009 differs from the Sections of the previous Criminal Procedure Code Chapter 21.

The relevant Section of the Criminal Procedure Code Chapter 21 on appeals to High Court from the Magistrates Court is Section 308.

Section 308 of Criminal Procedure Code Chapter 21:-

Appeal to High Court

308 (1) - Save as hereinafter provided, any person who is dissatisfied with any judgment, sentence or order of a magistrates' court in any criminal cause or matter to which he is a party may appeal to the High Court against such judgment, sentence or order:

Provided that in respect of proceedings other than proceedings that were conducted in the name of the Commissioner of the Fiji Independent Commission Against Corruption, no appeal shall lie against an order of acquittal except by, or with the sanction in writing of, the Director of Public Prosecutions.

308 (8) - An order by a court in a case may be the subject of an appeal to the High Court, whether or not the court has proceeded to a conviction in the case.

The Criminal Procedure Code Chapter 21 was repealed by the Criminal Procedure Decree of 2009 which came to effect on 1st February, 2010.

The relevant Section in Criminal Procedure Decree of 2009 on appeals to High Court is Section 246.

Section 246 of the Criminal Procedure Decree of 2009:-

Appeal to High Court

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 judgment and sentence.

246 (7) - An order by a court in a case may be the subject of an appeal to the High Court, whether or not the court has proceeded to a conviction in the case, but no right of appeal shall lie until the Magistrates Court has finally determined the guilt of the accused person, unless a right to appeal against any order made prior to such a finding is provided for by any law.

The Sections relevant to the appeal on orders in Criminal Procedure Code Chapter 21 and Criminal Procedure Decree of 2009 are Sections 308(8) and 246(7) respectively.

Therefore the plain reading of Sections 308(8) of the Criminal Procedure Code Chapter 21 and Section 246(7) of the Criminal Procedure Decree of 2009 shows the portion of the sentence **"but no right of appeal shall lie until the Magistrates Court has finally determined the guilt of the accused person, unless a right to appeal against any order made prior to such a finding is provided for by any Law"** is deliberately added to the Section 246(7) in the Criminal Procedure Decree of 2009 which was not there in the Section 308(8) of Criminal Procedure Code Chapter 21.

The duty of the Court is to give effect to the intention of the legislature. Criminal Procedure Code Chapter 21 is now repealed. Therefore the relevant provision effective now is Section 246 of the Criminal Procedure Decree of 2009.

In terms of Section 246(7) of the Criminal Procedure Decree of 2009 as it now stands whether or not the court has proceeded to a conviction in the case an order of a Magistrate is appealable.

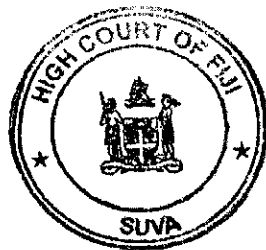
But it is necessary that the Magistrates Court finally determines the guilt of the accused person for the order to become appealable.


There can be instances where after finding the accused guilty courts act without proceeding to conviction.

Section 246(1) of Criminal Procedure Decree of 2009 starts by stating "**subject to any provision of this part to the contrary.....**" Therefore Section 246(1) of the Criminal Procedure Decree 2009 is subject to the proviso to Section 246(7).

In the instant case as regards to the Appellant it is not against a Judgment or Sentence he is appealing. He is appealing against the order of the learned Magistrate. Therefore in terms of Section 246(7) of the Criminal Procedure Decree of 2009 the Appellant has no right of appeal against the order as the learned Magistrate has not determined his guilt finally.

Hence the appeal is dismissed.




Priyantha Fernando
Puisne Judge
01/04/2010