

IN THE HIGH COURT OF FIJI  
AT SUVA  
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO: HAA 007/2013

BETWEEN:

THE STATE

APPELLANT

AND:

RAVINDRA LAL

RESPONDENT

COUNSEL: Mr L Fotofili for the Appellant/State  
Mr A Reddy for the Respondent

Date of Hearing: 10<sup>th</sup> day of June 2013

Date of Judgment: 18<sup>th</sup> day of July, 2013

## JUDGMENT

01. RAVINDRA LAL (hereinafter "the Respondent") was charged for Larceny contrary to section 259(1) and 262 of the Penal Code, Cap. 17.

02. The particulars of offence were:

**"RAVINDRA LAL on the 14<sup>th</sup> day of November 2008 at Nabua in the Central Division stole a Toyota Marino vehicle registration No: EG 831 valued at \$16500.00 the property of UMESH CHAND"**

03. The trial was commenced on 17/09/2012 and prosecution closed their case on 18/09/2012. During the trial prosecution called 08 witnesses and tendered 11 documents. Further 06 documents were marked during cross examination of Prosecution witnesses by the defence.

04. On 17/01/2013 the learned Chief Magistrate delivered his no case to answer ruling and acquitted the Respondent.
05. Being aggrieved, the Appellant has appealed against the Ruling of learned Chief Magistrate on the following grounds:
1. The learned Chief Magistrate erred in law and in fact in acquitting the Respondent at no case to answer stage due to the prosecution not leading evidence on the element that the Respondent took the vehicle when there was evidence namely from the Respondent's caution interview dated 27/05/2009 tendered during trial as prosecution exhibit 10, establishing that the Respondent took and carried away vehicle EG 831 the property in question.
  2. The learned Chief Magistrate erred in law and in fact in acquitting the Respondent at the no case to answer stage due to the prosecution not leading evidence on the element of unlawfulness when there was evidence establishing fraud and without claim of right made in good faith from the following pieces of evidence inter alia:
    - a. The oral testimony of PW1 Umesh Chand that there was only a personal loan between himself and the Respondent;
    - b. There was a bill of sale registered by the Respondent on this personal loan where the Bill of Sale was not in the name of the Respondent but in the name of Autoworld Trading Fiji Ltd where the Respondent was the Managing Director.(exhibit D4);
    - c. The registration of the Bill of Sale was done on 17-11-2008, a date after vehicle EG 831 was seized by the Respondent as evident from the police statement of PW4 Torika Goneca tendered during trial as prosecution exhibit P4 and the oral testimony of PW1 Umesh Chand;
    - d. In the Respondent's caution interview dated 27-05-2009 tendered during trial as prosecution exhibit P9, the Respondent in answering to question 54-58 admits that there was a personal loan between himself and PW1 and

he went on to register a Bill of Sale on this loan where interest was also charged on the personal loan.

3. That learned Chief Magistrate erred in law in acquitting the Respondent at no case to answer stage as the issue of whether the case was a Civil or Criminal matter is not a test to be considered during no case to answer in the Magistrate Court.`

The Law

06. Section 231(1) of the Criminal Procedure Decree 2009 reads as follows:

“When the evidence of the witnesses for the prosecution has been concluded, and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty if it considers that there is **no evidence** that the accused person (or any one of several accused) committed the offence”

07. The law on no case to answer in the Magistrate’s Court is well settled. His Lordship Justice Goundar said in **State v Abdul Aiyas** Criminal Case HAC 33 of 2009 at Paragraph 5:

“The test for no case to answer in the Magistrate’s Court under Section 210 is adopted from the Practice Direction, issued by the Queen’s Bench Division in England and reported in [1962] 1 All. E. R 448 (**Molden v R**(1976) 27 FLR 206. There are two limbs to the test under section 210:

- (i) Whether there is no evidence to prove an essential element of the charged offence;
- (ii) Whether the prosecution evidence has been so discredited or is so manifestly unreliable that no tribunal could convict.
- (iii) An accused can rely either limb of the test under section 210 to make an application for no case to answer in the Magistrates’ Court.

08. The Respondent had not disputed his Caution Interview Statement which has been marked as P10. He admitted removing the vehicle in question from complainant’s possession.

09. The Respondent further admitted in his Caution Interview Statement the existence of Personal Loan between him and the complainant. Also admitted that interest was added to that from the Bill of Sale. At the time of the seizure of the vehicle there was no Bill of Sale registered. The Bill of Sale was registered three days after the seizure of the vehicle.
10. The vehicle had been removed from complainant possession without any valid authority by the Respondent. No loan existed between the Complainant and the Respondent's company.
11. After careful consideration of the evidence led before learned Chief Magistrate I conclude there is sufficient evidence touching on each elements of the charge.
12. I agree with the Appellant that there are only 2 limbs to a no case to answer succeeding in the Magistrate's Court. The question whether the dispute comes under Civil or not does not fall under any of the limbs mentioned above.
13. Due to afore mentioned reasons I set aside the No case To Answer Ruling dated 16<sup>th</sup> January 2013 and quash the order for acquittal in favour of the Respondent.
14. Further I order a re-trial before a new Magistrate. The re-trial should be concluded in two months of this order.
15. 30 days to appeal.

P Kumararatnam

**JUDGE**

At Suva

17/07/2013

