

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO.: HAM 456 OF 2013

BETWEEN: RAJENDRA PRASAD BROTHERS LIMITED
TRADING AS RAJENDRA'S FOOD TOWN

Appellant

AND: FIJI COMMERCE COMMISSION

Respondent

Counsels: Ms. V. Lidise for the Appellant
Mr. A. Reddy for the Respondent

Date of Hearing: 4 June 2014
Date of Judgment: 10 June 2014

JUDGMENT

1. The appellant was charged before the Lautoka Magistrate Court with the following offence;

STATEMENT OF OFFENCE

Having for sale by retail certain percentage price control stationary items at an excessive price. Contrary to paragraph 3 of the Counter Inflation (Price Control) Stationery and Text Books) (No. 24) Order 1993, Section 52 (a) and Section 129 (3) of the Commerce Commission Decree No. 49 of 2010.

PARTICULARS OF OFFENCE

Rajendra Prasad Brothers Limited T/A Rajendra's Foodtown did on the 25th of January 2013 at Lautoka in the Western Division being a trader having for sale by retail certain percentage price control stationary items at an excessive price namely; 10 pieces of 50ml HD Clear Glue at \$0.50 per piece instead of \$0.48 per piece the maximum calculated price such price in excess of \$0.02 per piece, 10 pieces of Colour Crayons 12's at \$0.75 per piece instead of \$0.71 per piece the maximum calculated price such price in excess of \$0.04 per piece and 8 Uno Cello Blue pen at

\$0.75 per pen instead of \$0.32 per pen the maximum calculated price such price in excess of \$0.43 per pen.

2. On 12.8.2013 Company's representative had pleaded Guilty to the offence.
3. The appellant was imposed a fine of \$10,000.00 with default period of 12 months imprisonment on 28.10.2013.
4. The appellant had paid the fine on 29.11.2013.
5. This petition of appeal against sentence was filed on 22.11.2013 within time.
6. The grounds of appeal are:
 - (i) That the learned Magistrate erred in fact and law in imposing the said sentence without considering sentences of similar offending referred to in the written submissions filed on the petitioner's behalf.
 - (ii) That the learned Magistrate erred in law by failing to consider the emerging tariff in the sentencing of the same and similar offences and impose a sentence consistent with the tariff.
 - (iii) That the said sentence is wrong in law as it is substantially disparate to the same or similar offences with the same or similar circumstances where significantly lower sentences have been imposed.
 - (iv) That the learned Magistrate erred in law in failing to take into account the petitioner's early guilty plea and award an appropriate discount thereof when sentencing the petitioner.
 - (v) That the said sentence is harsh and excessive having regard to all the circumstances of the case.

Grounds (i) – (iii)

7. On 12.8.2013 appellant had filed Mitigation submissions in the Magistrates Court. Attention was drawn to four cases.

- (i) **Fiji Commerce Commission v New World Limited** Criminal Case No. 463 of 2011 Magistrate Court of Nasinu:

The company pleaded guilty to the offence of offering to sale Solomon Blue curry flakes at a price being excess of \$0.43, 2L and 5L corn oil at prices in excess of \$0.83 and \$3.21 respectively. The company was fined \$2,000.00 and ordered to pay costs of \$34.50. This was the third conviction for the company.

(The learned Magistrate had wrongly identified the maximum penalty as \$5,000.00)

- (ii) **Fiji Commerce Commission v Jai Ram** Criminal Case No.290/12 Magistrate Court of Suva:

The accused was charged with the offence of having offered to sale at excessive prices, Farmers Corned beef at a price in excess of \$0.85 per tin, Oxford Corned beef in excess of \$0.81, Farmers Corned beef in excess of \$0.62 and Rewa Life Milk in excess of \$0.62 per pack. The accused proprietor of the New Kiwi's Minimart had two previous convictions. He was fined \$2,000.00 with costs of \$34.50.

(As a person is charged the maximum punishment is \$10,000.00 according to Section 129 (1) of the Commerce Commission Decree)

- (iii) **Fiji Commerce Commission v Kalabo Investments Ltd t/a Shop N' Save Supermarket** Criminal Case No. 365/12:

The company was charged for offering to sale 22 packs of 1Kg Blue Peas in excess of \$0.07 per 1kg pack and 15 packs of 2kg Blue Peas in excess of \$0.13 per 2kg pack.

(As this was first offence fine of \$1,000.00 was ordered)

- (iv) **Barqain Box v Fiji Commerce Commission** [2012] FJHC 1001; HAA 001.2002 (30 March 2012) – The appellant was charged with the offence of selling price controlled items at excessive price and was fined \$2,000.00 after pleading guilty at the Magistrate Court. The Appeal was not allowed as the Court considered the fine as reasonable as the company was a first offender.
(It should be noted that Hon. Mr. Justice Daniel Goundar had stated "A fine of \$2,000.00 that was imposed on the appellant could hardly be considered excessive when you consider the maximum fine that is available for the offence.)

8. Three of the decisions submitted on behalf of the appellant are from the Magistrate Courts. Thus learned Magistrate is not bound to follow those. Further, in the first case cited above a wrong maximum sentence was considered. The second case was not against a body corporate. Third and fourth cases are in respect of first offenders. Main grounds of appeal are that the learned Magistrate had failed to follow cases of similar offending submitted on behalf of the appellant. As explained there is no merit in these grounds.

Ground (iv)

9. The next ground is that the learned Magistrate failed to give discount for the early guilty plea.

10. The learned Magistrate had considered following as mitigating factors:

- a. The offence was committed due to certain negligence taken place at the data entry process.
- b. The offence was not due to deliberate act.
- c. After discovering the mistake immediate steps were taken to rectify the errors.
- d. The offending company has remarkably contributed to the Fiji economy.
- e. The offending company had financially contributed for charity and in certain disastrous situations occurred in Fiji.

11. The fine ordered is 1/5 of the maximum fine of \$50,000.00. Although the learned Magistrate had failed to mention about early guilty plea the deductions given for the mitigation is just and appropriate for the third time offender.

Ground (v)

12. The last ground is that the sentence is harsh and excessive. Bundle of authorities were submitted by the appellant in support of this argument. Now I consider those authorities.

- (i) **Fiji Commerce Commission v MH Paradise** Criminal case No. 361/11 Magistrate Court of Savusavu on 8.2.2012:

For offering to sale eight 20 mm cello tape in excess of \$0.03 and 31 pieces of Bic Ball pen in excess of \$0.04 a fine of \$2,000.00 was ordered. This was the third offence.

(The learned Magistrate had identified the maximum penalty as \$5,000.00. It is an error and it should be \$50,000.00.)

- (ii) **Fiji Commerce Commission v MH Premium** Criminal case No. 362/11 Magistrate Court of Savusavu on 8.2.2012:

For offering to sale of 3 boxes of 100 pieces of coloured chalk in excess of \$0.09 and six 118 ml Bic school glue at excess of \$1.63 a fine of \$2,000.00 was ordered.

(The learned Magistrate had identified the maximum penalty as \$5,000.00. It is an error and it should be \$50,000.00)

- (iii) **Fiji Commerce Commission v Ram Jattan & Sons Limited** Criminal Case No. 76/13 Magistrate Court of Labasa on 24.4.2013:

For offering to sale six bottles of 2 litre Golden Drop Canola oil in excess of \$0.15 and six bottles of 2 litre Golden Drop Soya Bean oil in excess of \$0.58 a fine of \$2,000.00 was ordered. This was the second offence.

(The learned Magistrate had identified the maximum penalty as \$25,000.00. It is an error.)

- (iv) *Fiji Commerce Commission v Brij Lal & Sons* Criminal Case No.161/11 Magistrate Court of Labasa on 25.7.2012:

For offering to sale nine 1Kg white rice packs in excess of \$ 0.30 a fine of \$2,500.00 was after trial.

(The learned Magistrate had correctly identified the maximum penalty as \$25,000.00 as this was the first offence)

- (v) *Fiji Commerce Commission v Sahira Investment t/a Brij Bhan Singh & Sons* Criminal Case No. 297/13 Magistrate Court of Nausori on 13.12.2013:

For offering to sale 25 bags of 1Kg flour in excess of \$0.09 and 13 Bags of 2Kg flour in excess of \$0.16 a fine of \$500.00 was ordered. This was first offence.

(The learned Magistrate had identified the maximum penalty as \$5,000.00. It is an error and it should be \$25,000.00)

- (vi) *Fiji Commerce Commission v Super Foods Super Market t/a Ramesh Investment Ltd* Criminal Case No. PP 68/11 Magistrate Court of Lautoka on 2.7.2013:

For offering to sale 25 packs of 500g garlic in excess of \$1.19 a fine of \$5,000.00 was ordered.

(This was the first offence)

- (vii) *Fiji Commerce Commission v R B Patel Group Ltd* Criminal Case No.PP41/11 Magistrate Court of Lautoka on 24.7.2012:

For offering to sale 37 packs of 1Kg split peas in excess of \$0.11 a fine of \$5,000.00 was ordered.

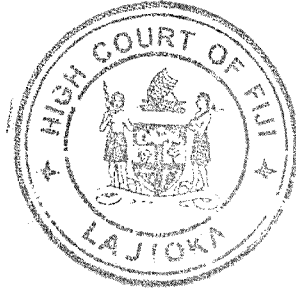
(This was the first offence)


13. Careful perusal of above case authorities reveals that in the cited cases of repeated offenders the learned Magistrates have identified wrong maximum penalties. Therefore these cannot be considered as reflecting an emerging sentencing trend in respect of offences by corporations.

14. There is no merit in the argument that the learned Magistrate ought to have imposed a sentence consistent with above cited cases.

15. This Court had upheld a fine of \$15,000.00 ordered in respect of fourth time offender in *New World Limited T/A New World Supermarket v Fiji Commerce Commission* HAA 32 of 2013(4th June 2014). This is appellant's third offence. There is no merit in the ground that the sentence is harsh and excessive.

16. For the reasons given above the appeal against the sentence is dismissed.




Sudharshana De Silva
JUDGE

10th June 2014
At Lautoka

Counsel: Young & Associates for the Appellant
Reddy and Nandan Lawyers for the Respondent