

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**HAC NO. 191 OF 2016**

**BETWEEN : STATE**

**AND : MOHAMMED SHAID KHAN**

**Counsel : Mr J Niudamu for State**  
**Mr M Fesaitu for Accused**

**Date of Ruling : 25<sup>th</sup> October 2016**

**RULING**

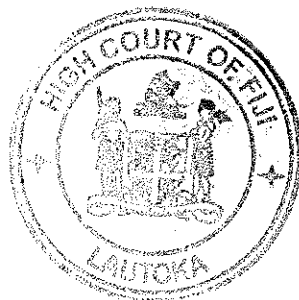
1. The Accused is being charged in the Magistrate court for one count of Cultivation of Illicit Drugs, contrary to Section 5 (a) of the Illicit Drugs Control Act 2004. The particular of the offence are that;


*“Mohammed Shaid Khan on the 18th day of July 2016 at Lautoka in the Western Division without lawful authority cultivated 47 plants weighing 59.9 grams of Cannabis Sativa or Indian Hemp, an illicit drug”*

2. The accused was first produced before the Magistrates court of Lautoka on the 28th of September 2016. The learned Magistrate has then transferred this case to the High Court pursuant to Section 191 of the Criminal Procedure Decree.
3. This case was first call before the High Court on the 14th of October 2016, where the counsel for the prosecution and the defence made an application to remit this matter back to the Magistrates court.

4. Section 4(1) of the Criminal Procedure Decree defines the jurisdictions of the High Court and the Magistrates court in respect of the offences stipulated under the Crimes Decree. Section 5 of the Criminal Procedure Decree deals with the jurisdiction of the court in regards to the offences which have been created under other laws. Section 5 of Criminal Procedure Decree states that;
  - I. *Any offence under any law other than the Crimes Decree 2009 shall be tried by the court that is vested by that law with jurisdiction to hear the matter.*
  - II. *When no court is prescribed in any law creating an offence and such offence is not stated to be an indictable offence or summary offence, it may be tried in the Magistrates Court in accordance with any limitations placed on the jurisdiction of classes of magistrate prescribed in any law dealing with the administration and jurisdiction of the Magistrates Courts.*
5. Accordingly, the magistrate court has been given the jurisdiction to hear the offences that have been created under other laws, if such laws has not specifically prescribed the jurisdiction of the court or not stated whether the offence is an indictable or summary offence.
6. In this instant case, accused has been charged for one count of Cultivation of Illicit Drugs contrary to Section 5 (a) of the Illicit Drugs Control Act. The Illicit Drugs Control Act has not specifically given the High Court a jurisdiction to hear the offences under the said Act. Moreover, the Illicit Drugs Control Act has not stated whether the offences under Section 5 (a) of the Act is indictable or summary offences. Hence, the Magistrates court has jurisdiction to hear this case pursuant to Section 5 (2) of the Criminal Procedure Decree.

7. Section 191 of the Criminal Procedure Decree has given the Magistrate court a jurisdiction to transfer any charges or proceedings to the High Court.
8. The Magistrate is allowed to stop any summary trial and transfer the matter to the High Court pursuant to Section 188 (1) of the Criminal Procedure Decree, if he finds the case is one which ought to be tried by the High Court.
9. Accordingly the Magistrate in exercising his discretion under Section 188 (1) and 191 of the Criminal Procedure Decree should provide the reasons for transferring the matter to the High Court. In this instant case, there is no reason given by the learned Magistrate for transferring the matter to the High Court.
10. Having satisfied that the Magistrate court has jurisdiction to hear the offences under Illicit Drugs Control Act pursuant to Section 5 (2) of the Criminal Procedure Decree, it is my opinion that the proceedings must be continued in Magistrates court as no reasons was provided by the learned Magistrate why he considered this is a case ought to be tried by the High Court.
11. I accordingly remit this matter back to the Magistrates court of Lautoka.



  
R. D. R. Thushara Rajasinghe  
Judge

At Lautoka  
25<sup>th</sup> October 2016

Solicitors : Office of the Director of Public Prosecutions  
Office of the Legal Aid Commission