

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

MISCELLANEOUS CASE NO. HAM 190 OF 2018

BETWEEN: **KRITESH KUMAR** **APPLICANT**

AND: **THE STATE** **RESPONDENT**

Counsel : Mr. A. K. Singh for the Applicant
 : Ms. J. Fatiaki for the Respondent

Date of Hearing : 26th September 2018

Date of Ruling : 15th November 2018

RULING
[of Staying Proceeding]

1. The Applicant filed this Notice of Motion, seeking following orders, *inter alia*;

(a) *That the current charge being count 1 against the Applicant be stayed as being abuse of process.*

(b) *That State be ordered to disclose:*

(i) *the running sheet and log book of the vehicle used for the operation of this vehicle from 29th October 2017 to 2nd November 2017;*

(ii) *Cell Book record of 30th October 2017 to 6th November 2017;*

(c) *That the search conducted at the accused house on 30th October 2017 and 1st November 2017 were unlawful and breach of the Applicant's right under the constitution and section 98 of the Criminal Procedure Decree 2009.*

2. The Notice of Motion is being supported by the affidavit of the Applicant, explaining the grounds for this application. The Respondent filed an affidavit of Detective Constable Eliki Kaumaitotoya, stating the objections of the State.
3. Subsequent of filling the respective affidavits of the parties, the Applicant and the Respondent were directed to file their respective written submissions, which they filed as per the directions. Subsequently, the matter was proceeded to hearing on the 26th of September 2018. Then the learned counsel for the Applicant and the Respondent made their respective oral submissions during the hearing. Having carefully considered the respective affidavits and submissions made by the parties, I now proceed to pronounce my ruling as follows.
4. The law pertaining to stay of proceedings has been discussed in **Takiveikata v State [2008] FJHC 315; HAM039.2008 (12 November 2008)**, where it was held that:

“It is common ground that the High Court of Fiji, being a superior court of record, has an inherent jurisdiction to stay proceedings which are determined by the Court to be an abuse of the process of the court. Generally speaking, the circumstances in which this court might consider the imposition of a stay of proceedings are:

- (i) *circumstances are such that a fair trial of the proceedings cannot be had; or*
- (ii) *there has been conduct established on the part of the*

executive which is so wrong that it would be an affront to the conscience of the court to allow proceedings brought against that background to proceed.

5. The first ground of this application is founded on the contention that the first count of the information is defective, hence, the proceedings in this matter is amount to an abuse of process. The learned counsel for the Applicant contends that the information between the particulars of the offence and the report of the Fiji Police Forensic Chemistry Laboratory are inconsistency in respect of the weight of the illegal substance, the Methamphetamine.
6. Then learned counsel further contends that the particulars of information have stated that the weight of the Methamphetamine is 1.4 kg, but the analysis report said that only 40% of the substance is methamphetamine.
7. The learned counsel for the Respondent submitted that the particulars of offence have clearly outlined the case against the Applicant and the disclosures have disclosed the evidence that the prosecution relies in order to prove the charges against the Applicant. Moreover, the learned counsel submitted that the purity percentage of the illegal substance become relevant in the sentencing process.
8. I find that the issue of the quality and quantity of the illicit drugs is a triable issue and need to be determined at the hearing. The court is not in a position to determine the quality or quantity of the illicit drugs at this pre-trial stage. Moreover, it is my view that the percentage of the purity will only be considered in order to determine the appropriate sentence, if the Applicant is found guilty to this offence. Therefore, there is no requirement to mention the percentage of the purity in the information. I am satisfied that the information filed by the prosecution has sufficiently disclosed the case, for the defence to understand and to form their defence. Therefore, I do not find any merits in the first ground.

9. I do not wish to discuss the second ground, as both parties agreed to endeavour to finalize it during the pre-trial process of this matter.
10. The third ground is based upon the contention that the police have breached the constitutional rights of the Applicant by executing a search at his house without a valid search warrant. Once again that is an issue that the prosecution has to prove during the substantive hearing.
11. In conclusion, I do not find any merit in this Notice of Motion. I therefore refuse it and dismiss it accordingly.




R.D.R.T. Rajasinghe
Judge

At Suva
15th November 2018

Solicitors

A. K. Singh Law for the Applicant.
Office of the Director of Public Prosecutions for the Respondent.