



- a) *That the learned Magistrate failed to consider all the evidence provided by the defence.*
  - b) *That the learned trial Magistrate failed to give proper weight to the statements made by the Prosecution's witness PW1 (Lavenia Dimaravu), who gave statements purporting the following:*
  - c) *That PW1 did not do a search to see what entity Reddy and Nandan Lawyers was.*
  - d) *That PW1 admitted and accepted, that she did not quote the section of the by-law to show the offence of using a black plastic garbage bag.*
  - e) *PW1 admitted that she did not take any statements from Patricia Nand (the Receptionist of Reddy and Nandan Lawyers).*
  - f) *PW1 admitted that the owners of Reddy and Nandan Lawyers were not served personally.*
  - g) *PW1 admitted and accepted that she did not take and exhibit the contents of the black plastic bag nor was the contents presented in Court.*
- ii) *That the learned trial Magistrate erred in law and in fact in convicting the accused and not considering the material fact that the Prosecution did not prove the case beyond reasonable doubt with PW1 as a key witness.*
  - iii) *That the learned trial Magistrate erred in law and in fact in not considering that the Prosecution did not produce the following which creates reasonable doubt on its own:*

- a) *The alleged documents in the garbage bag belonging to Reddy and Nandan Lawyers.*
- b) *The caution interview of Patricia Nand who allegedly confessed to the offence.*
- c) *Prosecution witness Ranjina Hicks who was present at the scene.*
- d) *The relevant section By-Laws that the Prosecution witness released on to charge Reddy and Nandan Lawyers.*

#### *AGAINST SENTENCE*

- iv) *That the learned trial Magistrate erred by not granting further time for the Accused to file mitigating factors.*
  - v) *That the learned trial Magistrate erred in law and in fact in sentencing the Appellant with the fine of \$1000.00.*
  - vi) *The accused reserves his rights to add or amend further grounds upon receipt of the record of the Magistrate's Court.*
2. Upon being served with the Summons, the Respondent appeared in Court on the 09.07.2019. The Parties were directed to file their respective written submissions, which they filed as per the direction. Consequence upon the filing of the respective written submissions, the appeal was fixed for the hearing. The learned counsel for the Appellant, and the Respondent made their respective oral submissions during the hearing. Having carefully considered the record of the proceedings in the Magistrate's Court, and the respective written and oral submissions of the parties, I now proceed to pronounce the Judgment as follows.

3. The Appellant is a law firm practicing as a partnership under the name of Reddy and Nandan Lawyers. The Appellant was served with a Fixed Penalty Notice pursuant to Section 22 (1) of the Litter Act, alleging that the Appellant had deposited and abandoned litter on a public street an offence under Section 10 (2) of the Litter Act. The Appellant had not paid the said penalty; hence, the matter proceeded to the Magistrate's Court. The Appellant was represented by the two partners of the Law Firm and pleaded not guilty. The matter then fixed for the hearing on the 20.06.2018. The Prosecution presented the evidence of the Litter Prevention Officer who had served the Fixed Penalty Notice to the Appellant. The Appellant had exercised their right to remain silent, hence, no evidence was adduced for the defence. The learned Magistrate on the 29th of March 2019 delivered his Judgment, finding the Appellant guilty of the offence. The learned Magistrate then sentenced the Appellant by imposing a fine of \$1000 on the 21st of May 2019. Aggrieved with the said conviction and the sentence, the Appellant filed this Petition of Appeal.

#### **Appeal against the Conviction**

4. All the grounds of appeal against the conviction are founded on the contention that the learned Magistrate had failed to properly take into consideration the evidence presented by the Prosecution and the defence in convicting the Appellant.
5. One of the main arguments advanced by the learned Counsel for the Appellant is that the Fixed Penalty Notice was not personally served on neither Mr. Nandan nor Mr. Reddy, who are the two partners of the Law Firm. Therefore, the subsequent proceeding initiated based on the said Fixed Penalty Notice is invalid.
6. Section 22 (1) of the Litter Act has provided the procedure of serving the Fixed Penalty Notice, where it states that:

*"Notwithstanding the requirements of the Criminal Procedure Act 2009, but subject to the succeeding provisions of this section, it shall be lawful for an officer to institute proceedings in respect of the alleged commission of an*

*offence against sections 7(1)(b), 8(5), 10(2), 11, 12(1) and (2) by serving personally upon the person alleged by him or her to have committed the offence a fixed penalty notice."*

7. Section 10 (2) of the Litter Act defines the offence as:

*"A person or corporate body or any other organisation who both directly or indirectly deposits and abandons any litter in or on any public place commits an offence."*

8. The Appellant is a Law Firm, practicing as a partnership. Hence, the Appellant is an organization that the learned Magistrate has correctly stated in paragraphs 16 and 17 of the Judgment. Section 22 (1) has not explicitly defined the mode of service to corporate bodies and organizations. Section 22 (1) has stated that it shall be lawful to institute proceedings by serving personally upon the person who has allegedly committed the offence. The purpose of serving personally upon the person who has allegedly committed the offence is to make sure the Fixed Penalty Notice reaches him or her properly. It enables that person to pay the fixed fine if he or she wishes to do so and prevent proceeding further. The suspect must be given an opportunity to pay the fixed penalty before the institution of the proceedings in the Magistrate's Court. The learned Magistrate has found that serving to the person in charge of an organization, in the event the owners were not present, is sufficient to satisfy the requirement under Section 22 (1) of the Litter Act.
9. The contention of the Appellant is based upon the correctness of the procedure of serving the Fixed Penalty Notice. The Appellant did not allege that the partners did not receive this Fixed Penalty Notice, thus preventing them from paying the fine. Moreover, there is no contention from the Appellant that No. 29 Raojibhai Street, Suva, is not their usual place of business. The Appellant neither suggested to the Prosecution nor adduced evidence to that effect. Hence, it is clear that the Litter Prevention Officer had correctly served the Fixed Penalty Notice to the person in charge of the Appellant Law Firm at their usual place of business. Therefore, I do not find any merit in this contention.

10. The Appellant further submitted that the witness of the Prosecution failed to disclose the relevant provision of the by-law enacted by the Suva City Council, prohibiting the use of garbage bags to dispose of the garbage for the collection. However, the Appellant is not making an issue with the correctness of the charge. The charge has clearly stated the relevant section of the offence as Section 10 (2) of the Litter Act; hence, I do not find any merit in this contention.
11. The learned Counsel for the Appellant had cross-examined the witness of the Prosecution regarding the nature of the bag in which the litter was found. He had then suggested to the witness of the Prosecution that black garbage bags are usually used to dispose of the garbage for collection, which the witness refused and denied. Having carefully pursued the evidence given by the witness of the Prosecution and the cross-examination by the Appellant, it appears that the Appellant had not disputed or suggested otherwise of the existence of the garbage bag and the litter therein. Therefore, it is clear that the Prosecution has proven beyond a reasonable doubt that the Litter Prevention Officer had found a bag which contains full of litter from the Appellant's Law Firm.
12. The learned Magistrate has correctly concluded in paragraph 27 of the Judgment that the Prosecution has established beyond a reasonable doubt that the Appellant had deposited litter at a public street. The learned Magistrate has then taken into consideration the presumption as stipulated under Section 24 (a) of the Litter Act. According to Section 24 (a) of the Litter Act, if the Prosecution establishes that the litter has been deposited, then it shall be presumed that the litter had been abandoned unless the defence proves the contrary. The learned Magistrate found that the Appellant had failed to discharge the said legal burden to rebut the said presumption.
13. In view of the reasons discussed above, I do not find any merits in the grounds of appeal against the conviction.

### Appeal against the Sentence

14. I now draw my attention to the first ground of appeal against the sentence. The Appellant alleges that the learned Magistrate erred by not giving further time to the Appellant to file their mitigation submissions.
15. Having delivered the Judgment on the 29th of March 2019, the learned Magistrate had adjourned the matter till the 8th of April 2019 to file the sentencing and mitigation submissions. The Appellant had neither filed their mitigation submissions nor appeared in Court on the 8th of April 2019. The matter had again adjourned till 23rd of April 2019, for the mitigation. Once again, the Appellant failed to file their mitigation submission and also did not appear in Court on the 23rd of April 2019. The learned Magistrate had granted another adjournment till the 25th of April 2019 for the mitigation. However, the Appellant had failed to file their mitigation submission on the 25th of April 2019, but at least managed to appear in Court. Showing more tolerance, the learned Magistrate had granted the Appellant time till the end of the business of the day to file their mitigation submission, which they failed to file again.
16. According to the record of the proceedings in the Magistrate's Court, it is clear that the learned Magistrate had given the Appellant enough time and opportunities to file their mitigation submissions, which the Appellant had ignored without any respect to the Court. Under such circumstances, I do not find any merits in this ground of appeal.
17. The second ground of Appeal against the Sentence is based upon the contention that the learned Magistrate erred in law and fact in sentencing the Appellant with a fine of \$1000. The learned Magistrate has correctly imposed the prescribed fixed penalty for the offence under Section 10 (2) of the Litter Act. Therefore, I do not find any merits in this ground of appeal as well.



18. In conclusion, I make the following orders:

- i) The appeal against the conviction is dismissed,
- ii) The appeal against the sentence is dismissed.

19. Thirty (30) days to appeal to the Fiji Court of Appeal.



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R.D.R.T. Rajasinghe  
Judge

At Suva

26<sup>th</sup> May 2020

Solicitors

Reddy & Nandan Lawyers for the Appellant.

Suva City Counsel Legal Section for the Respondent.

Judgment pronounced in  
Court on  
26-05-2020

A handwritten signature in blue ink, appearing to be 'R.D.R.T. Rajasinghe'.