

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HACD 008 of 2022S

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

vs

VIJENDRA PRAKASH

Counsels:

Mr. Nand A, Mr. Aslam R, Work J and Hickee D - *for Prosecution*
Mr. Nandan S, Mr. Prakash R, Ms. Dean S - *for Accused*

Date of Ruling: 13.10.2022

RULING

1. In this matter, **Mr. Vijendra Prakash** has been charged in this Court by the Fiji Independent Commission Against Corruption (FICAC) on two counts, as follows:
 - i) **Tendering False Information to a Public Servant**, an offence contrary to **Section 201 (a)** of the **Crimes Act of 2009**; and
 - ii) **Obtaining Financial Advantage**, an offence contrary to **Section 326 (1)** of the **Crimes Act of 2009**.
2. At the trial, for the Prosecution case 23 witnesses gave evidence and **67 documents** were marked (**PEX1 – PEX67**). At the end of the Prosecution case, since the Court was satisfied that a prima facie case has been established against the accused, acting under **Section 231** of the **Criminal Procedure Act of 2009**, the Defense was called from the accused and the standard options available to the accused for his Defense were spelt out. For the Defense case, the counsel for the accused informed Court that the accused expects to give evidence under oath and summon several witnesses.
3. However, in relation to the sequence of defence witnesses expected to give evidence, Defense informed this Court that before summoning the accused to give evidence, Defense expects to summon other witnesses. In support of this claim, Defense expounds the right of the accused to summon witnesses under the provisions of **Section 14 (2)** of the **Constitution** of Fiji, as below:

“Every person charged with an offence has the right;

- (j) to remain silent, not to testify during the proceedings, and not to be compelled to give self-incriminating evidence, and not to have adverse inference drawn from exercise of any of these rights;*
- (l) to call witnesses and present evidence, and to challenge evidence presented against him or her.”*

4. In objecting to this sequence of evidence expected to be led by the Defense, Prosecution brings to the attention of this Court the provisions of **Section 232 (2)** of the **Criminal Procedure Act of 2009**, as below:

“The accused person may then give evidence on his or her own behalf, and then-

- (i) any defense witness may be examined or cross examine and re-examined and*
- (ii) the defense case shall be summed up.”*

5. On the above statutory provisions, Prosecution contends that it is clearly stipulated in the **Criminal Procedure Act of 2009** that the accused should first give evidence and **then** other witnesses could be led. In support of this position, Prosecution brings to the attention of this Court, the text of **Blackstone’s Criminal Practice (2013)**¹, which endorse the Prosecution position, as below:

“The accused should normally be called before any other defense witnesses (PACE 1984 s.79; Criminal Evidence Act 1898, s. 2). The rationale for this rule is that, whilst witnesses are normally kept out of court until they testify, the accused has the right to be present throughout his trial, and therefore would otherwise have the opportunity to adjust his evidence to accord with that of his witnesses.”

Determination of Court

6. In considering the statutory provisions highlighted by the Defense and the Prosecution in the **Constitution** of Fiji and in the **Criminal Procedure Act 2009**, the Court perceives that the two provisions highlighted are not in conflict with one another, but both provisions could co-exist without any contradiction. However, in considering the sequence of defense evidence, this Court is mindful that the chosen sequence of Defense evidence should not belittle or challenge the fundamental legal principles, which are considered as the keel of the common law criminal justice system we follow in Fiji. In this regard, this Court intends to emphasize the importance of not facilitating a witness in a criminal trial to hear the evidence of another witness in advance and

¹ (OXFORD University Press) 2013.

deceitfully design his or her evidence to read in consonance with the evidence of another witnesses and thereby elide the concept of fair trial.

7. To led a force to this argument, this Court takes guidance from the pronouncement of the **Chief Justice of the House of Lords of England and Wales Lord Alverstone** in the case of **R v Morrison (1911)**², as below:

“In all cases I consider it most important for the prisoner to be called before any of his witnesses. He ought to give his evidence before he has heard the evidence and cross-examination of any witness he is going to call.”

8. The rationale of the above position has been more succinctly analyzed more recently by **Justice Cusack of the Court of Appeal Criminal Division of England and Wales** in the case of **Smith (Joan) (1968)**³, as follows:

“The general rule and practice in criminal cases is that witnesses as to fact on each side should remain out of court until they are required to give their evidence. The reason for this is obvious. It is that if they are permitted to hear the evidence of other witnesses they may be tempted to trim their own evidence. It is certainly the general practice in the experience of all the members of this court that where an accused person is to give evidence he gives evidence before other witnesses who may be called on his behalf. There are, of course, rare exceptions, such as when a formal witness, or a witness about whom there is no controversy, is interposed before the accused person with the consent of the court in the special circumstances then prevailing. In the view of this court the general practice to which I have referred is the correct practice which ought to be observed.”

9. On the above analysis of the well-established concept of sequence of Defense evidence in common law jurisdictions, I dismiss the application of the Defence in this matter in relation to calling other witnesses before the accused for the Defense case.
10. If aggrieved by this ruling, Defense could appeal to the Court of Appeal of Fiji within the time provided by the applicable law.



A handwritten signature in black ink, appearing to read 'Thushara Kumarage', written over a horizontal dotted line.

Hon. Justice Dr. Thushara Kumarage

At Suva
13 October 2022

² 6 Cr. App Rep 159

³ 52 Cr. App. R. 224

