

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

**CRIMINAL MISC. NO. HAM 147 of 2024**

**BETWEEN** : **RAVIN LAL**  
**APPLICANT**

**A N D** : **THE STATE**  
**RESPONDENT**

**Counsel** : Mr. W. Pillay for the Applicant.  
: Ms. E. Cabemaiwai for the Respondent.

**Date of Submissions** : 04 July, 2024

**Date of Hearing** : 04 July, 2024

**Date of Ruling** : 08 July, 2024

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**R U L I N G**

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**BACKGROUND INFORMATION**

1. The applicant faces a count of unlawful cultivation of illicit drugs and a count of unlawful possession of illicit drugs both contrary to section 5 (a) of the Illicit Drugs Control Act.
2. It is alleged that on the 28<sup>th</sup> day of December, 2021 the applicant without lawful authority cultivated 119 plants weighing 36,040 grams of cannabis

sativa or Indian hemp and also had in his possession 348 grams of cannabis sativa or Indian hemp an illicit drug.

3. On 3<sup>rd</sup> June, 2022 the applicant pleaded guilty to the charge and also admitted the summary of facts read and explained to the applicant in his preferred language in the presence of his counsel. On 25<sup>th</sup> September, 2023 the learned Magistrate found the applicant guilty and convicted him as charged.
4. After the filing of the submissions and mitigation by the defence counsel the learned Magistrate proceeded to sentence the applicant, however, the sentence was not delivered after the learned Magistrate realized that the sentence may be beyond the powers of the Magistrate's Court.
5. Pursuant to section 190 of the Criminal Procedure Act the file was transferred to the High Court for sentence. On 7<sup>th</sup> December, 2023 the file was for first call in the High Court. Before the matter could progress the applicant filed a notice of motion and his supporting affidavit to withdraw his guilty plea.
6. This court in HAM 297 of 2023 by ruling dated 16<sup>th</sup> May, 2024 dismissed the application for withdrawal of the applicant's guilty plea due to lack of jurisdiction. On this date, the court revoked the bail of the applicant on the grounds that he had already been found guilty and convicted by the Magistrate's Court. The substantive matter was adjourned to 5<sup>th</sup> June, 2024 for sentence.

### **APPLICATION TO THE HIGH COURT**

7. This is the second notice of motion dated 30<sup>th</sup> May, 2024 filed by the applicant in recent weeks. In the current notice of motion supported by the affidavit of

the applicant sworn on 30<sup>th</sup> May, 2024 the applicant seeks the following orders:

- a. ***THAT*** Lautoka High Court Action HAC 161 of 2023 being State v Ravin Lal be stayed pending the outcome of the application of the Applicant before the Nadi Magistrates Court in Criminal Case No. 1250 of 2021 for withdrawal/setting aside of the plea of guilty entered on 24 June 2022 before the Magistrates Court at Nadi.
  - b. ***THAT*** the Applicant, Ravin Lal, be released on bail pending the application of the Applicant before the Nadi Magistrates Court in Criminal Case No. 1250 of 2021 for withdrawal/setting aside of the plea of guilty entered on 24 June 2022 before the Magistrates Court at Nadi.
  - c. ***ALTERNATIVELY***, the Applicant, Ravin Lal, be released on bail pending sentence on the terms this Court may deem just and/or fit in the circumstances.
  - d. ***ALTERNATIVELY***, the entire action being Lautoka High Court Action HAC 161 of 2023 being State v Ravin Lal be transferred to the Nadi Magistrates Court for the determination of the application of the applicant before the Nadi Magistrates Court in Criminal Case No. 1250 of 2021 for withdrawal/setting aside of the plea of guilty entered on 24 June 2022 before the Magistrates Court at Nadi.
8. The application is opposed by the state, however, no affidavit in reply has been filed. The state relies on the submission of counsel.
  9. Both counsel filed written submissions and also made oral submissions during the hearing for which this court is grateful.

#### **SUBMISSIONS BY THE APPLICANT**

10. The applicant's counsel argued that since this court does not have the jurisdiction to set aside the guilty plea of the applicant they seek a stay of the

sentence in the substantive file being HAC 161 of 2023 pending the outcome of their application in the Magistrate's Court for the withdrawal/setting aside of the guilty plea entered on 24<sup>th</sup> June, 2022.

11. Counsel also submitted that whilst the above is being attended to, the applicant be released on bail or alternatively the entire substantive file in the High Court be transferred to the Magistrate's Court.
12. The affidavit filed in support of the notice of motion once again deposes to a large extent the facts that were already put before this court in HAM 297 of 2023. The primary complaint raised by the applicant is that he pleaded guilty upon the wrong advice of his former counsel in the Magistrate's Court. His former counsel had failed and/or neglected to give him proper and competent advice from the disclosures served by the prosecution. There is a valid defence available which goes to the core of the charges, the applicant would have never pleaded guilty had he been properly and correctly advised.

### **DETERMINATION**

13. This court has in its earlier ruling in HAM 297 of 2023 delivered on 16<sup>th</sup> May, 2024 discussed the law that governed the transfer of cases to the High Court for sentencing under section 190 of the Criminal Procedure Act.
14. The purpose of section 190 was also addressed in the ruling and reliance was placed on the Supreme Court decision in *Vishwa Nadan vs. The State, criminal petition no. CAV 0007 of 2019 (31 October, 2019)*. What is concerning to this court is that the applicant's counsel has taken a somewhat unusual interpretation of the ruling delivered in HAM 297 of 2023. Counsel in his submissions (and applicant's affidavit) mentioned rhetorically that if the High Court has no jurisdiction to set aside the guilty plea than who has? This

assertion by counsel is at odds with section 190 (4) of the Criminal Procedure Act which is clearly mentioned in the earlier ruling of this court. It is obvious to me that counsel has misconstrued the essence of the ruling delivered.

15. The ruling delivered by this court in the miscellaneous application HAM 297 of 2023 explains the reasons why the High Court did not have the powers to set aside the guilty plea of the applicant from paragraphs 12 to 15 as follows:

#### Paragraph 12

*The purpose of section 190 above is to sentence an offender in the High Court after the offender has been convicted in the Magistrate's Court where the learned Magistrate is of the view that a greater punishment is to be imposed. When a file is transferred to the High Court for sentencing the power given to the High Court is limited one which is to "enquire into the circumstances of the case and deal with the person in any manner in which the person could be dealt with if the person had been convicted by the High Court."*

#### Paragraph 13

*In view of the above, this court has the power to sentence the applicant with the appropriate punishment but not to review the lawfulness or correctness of the conviction. The applicant has a recourse under section 190 (4) of the Criminal Procedure Act to appeal against the correctness or otherwise of the conviction to the Court of Appeal.*

#### Paragraph 14

*The Supreme Court in Vishwa Nandan vs. The State, criminal petition no. CAV 0007 of 2019 (31 October, 2019) at paragraph 28 made an important*

*observation in respect of the powers of the High Court under section 190 (3) of the Criminal Procedure Act at paragraph 28 as follows:*

*...The language of section 190(3) takes colour from its purpose. That purpose is to invest the High Court with the power in certain circumstances to sentence a defendant convicted in the magistrates' court. Although broad language is used, it is necessary to link the circumstances to be enquired into with the particular function which the High Court has to perform. Since that function is to determine the appropriate sentence, the circumstances to be enquired into are those which enable the High Court to do that. And as for Nawana JA's concern that it is unseemly for judges to pass sentence in a case in which the conviction might have been vitiated by some unlawful process, the answer is that the Act provides the route for that defect to be remedied, namely by an appeal under section 190(4)."*

#### Paragraph 15

*This court has to consider the intent and purpose of section 190 of the Criminal Procedure Act, amongst other matters the applicant is asking this court to go behind the copy record and consider matters supposedly between a solicitor and client and/or appellate court issues. The issues raised by the applicant are clearly beyond the scope envisaged by section 190 (3) of the Criminal Procedure [Act].*

16. The applicant has been found guilty and convicted the file has been transferred for sentence which this court is mandated to act upon under the law. The Magistrate's Court has performed its function under section 190 of the Criminal Procedure Act.
17. There is no merit in respect of the applicant's argument for a stay of sentence. The bail granted to the applicant in the Magistrate's Court was

displaced when he was convicted for the offences as charged. This court acted in accordance with section 3 (4) (b) of the Bail Act to revoke the applicant's bail (see *Sachida Nand Mudaliar vs. State* [2006] AAU 32 of 2006 (28 July, 2006). Even though, there was no appeal by the applicant at the time his bail was revoked does not alter the fact that he had been convicted of offences that warranted an imprisonment term.

18. The applicant's counsel also argued that this court can transfer this file back to the Magistrate's Court under section 190 (5) of the Criminal Procedure Act. This section vests a discretionary power on the High Court upon hearing submissions from the prosecutor to remit the person transferred for sentence to be dealt with by the Magistrate's Court. There was no such submission made by the state counsel in this regard and this is not a case that will come under this provision of the law.
19. Moreover, the applicant's counsel was highly critical of this court for relying on the Supreme Court decision in *Nadan's* case (supra), counsel contended that *Nadan's* case was not applicable considering the facts of the current case. This submission is misconceived.
20. The principle of law that was clarified and explained in *Nadan's* case was concerned with section 190 of the Criminal Procedure Act which governs transfer of cases to the High Court for sentence. The applicant's counsel in his lengthy submissions and hypothetical assertions is not prepared to accept the fact that section 190 of the Criminal Procedure Act has direct application in the substantive matter which is pending sentence. The position of the law in respect of transfer of cases to the High Court for sentence is now well and truly settled which this court is obliged to follow. Once an offender is found guilty and convicted by the Magistrate's Court a

transfer to the High Court for sentence empowers the High Court to do exactly that for completeness.

**ORDERS**

1. The application for stay of sentence, bail pending sentence and transfer of HAC 161 of 2023 to the Magistrate's Court, Nadi is dismissed as frivolous.



**Sunil Sharma  
Judge**



**At Lautoka**

08 July, 2024

**Solicitors**

**Messrs Gordon and Company for the Applicant.**

**Office of the Director of Public Prosecutions for the Respondent.**