

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Appeal No. HAA 39 of 2023

BETWEEN: **RAJNESH RUPAN**

APPELLANT

AND: **BIOSECURITY AUTHORITY OF FIJI**

RESPONDENT

Counsel: **Mr. A. Sen for the Appellant**
 Ms. S. H. Yadraca for the Respondent

Date of Hearing: **25th April 2024**

Date of Ruling: **12th September 2024**

SENTENCE

1. On the 25th of April 2024, the Court made the following orders on the Appeal against conviction and sentence filed by the Appellant, Rajnesh Rupan: -
 - i. The appeal against conviction is dismissed, the conviction against the Appellant stands.
 - ii. The appeal against sentence succeeds and, pursuant to section 256 (3) of the Criminal Procedure Act, the fine and costs handed down by the Court below is quashed.
 - iii. The Appellant will be examined as to his means.
 - iv. There is a right of further appeal

2. The Appellant’s conviction for the following offence has been affirmed by this Court and the matter has been adjourned for sentencing.
3. The relevant offence is as follows: -

“Obstruction, false information etc

92 A person who—

- (a) wilfully fails to comply with a lawful request made or direction given by a biosecurity officer under this Act;
- (b) knowingly obstructs a biosecurity officer in the performance of his or her functions under this Act;”

4. The Biosecurity Act provides the following sanction for the above offence by virtue of Schedule 5 of the Biosecurity Act as follows: -

s92	Obstruction etc of an officer	\$20,000	6 months	\$400
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5. The maximum fine for the offence is \$20, 000 and/or 6 months imprisonment while the fixed penalty is \$400.
6. In affirming the conviction, the Court made specific directions to the Appellant to provide evidence as to his means so that the Court could determine an appropriate sanction for the offending as the fines and costs ordered in the Magistrate’s Court has been quashed on appeal.
7. Instead of complying with the Court’s specific directions, the Appellant made further submission on sentencing including a recommendation for the Court to consider a discharge without conviction.
8. The Respondent was also directed to make recommendations for sentence, in particular for the costs and in the Affidavit of Ronak Cylvian Sharma, at paragraph 8 they submit that this Court has the powers under section 150 (1) of the Criminal Procedure Act to order costs.

9. In preparing the sentence, I am mindful of the fact that the Appellant disputed the Fixed Penalty Notice issued against him on that day, as he was entitled to. The Respondent was vindicated at Trial and the conviction was then affirmed on appeal.
10. The Appellant was facing a fixed penalty of \$400 prior to Trial and since this matter has now gone to Trial, it is only appropriate that the time and resources utilised in bringing the matter to Trial be reflected in the ultimate sanction imposed on the Appellant.
11. The Appellant has not provided evidence as to his means, therefore pursuant to section 32 (2) of the Sentencing and Penalties Act I will impose a fine in the absence of any evidence as to the Appellant's means.
12. From the facts of this offence – the Appellant had sought clarification from the Biosecurity Officer and if the initial approach has been more conciliatory from the Biosecurity Officer, then the Appellant may not have resorted to the actions that ultimately constituted the offence leading to the fixed penalty Notice.
13. In considering this matter in totality I find that it is appropriate to impose a fine and I hereby fine Rajnesh Rupan the sum of \$800, the sum to be paid in one month in default he may be subject to committal of 80 days (section 37 (1) of the Sentencing and Penalties Act.
14. As to the issue of costs, I find that the Appellant was entitled to challenge his booking in Court and this is a constitutionally guaranteed right available to him. By the same token this case has involved costs by both the prosecuting authority and the Appellant himself who has had to hire private counsel to defend the action and again to prosecute this appeal.
15. The matter has fittingly come to its conclusion and I do not find any compelling reason to award any further costs, especially in light of the fact that the statutory scheme of the Biosecurity Act does not provide for costs to be awarded.
16. I find it appropriate for both parties to bear their own costs in this matter.

Rajesh Rupan this is your sentence: -

1. For the offence of **Obstructing an Officer** contrary to section 92 of the Biosecurity Act – you are fined \$800, the fine to be paid in one month in default 80 days Committal to Prison.

30 days to appeal




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Mr. Justice Ratuveli
Puisne Judge

Solicitors

Sen Lawyers for the Appellant

Biosecurity Authority of Fiji for the Respondent