

- 1) That the Judgment delivered on file HAC No. 103/2021 dated 25th September 2024 be reversed / quashed.
 - 2) That the Applicant / Accused be discharged and released from Custody.
 - 3) That the Conviction of the Applicant / Accused entered in the Judgment be quashed and Sentence be stayed.
 - 4) That any other Orders the Honorable Court may deem just and equitable.
4. Section 239 of the Criminal Procedure Act (CPA) 2009 stipulates as follows:
- 1) *The accused person may, at any time before sentence, whether on a plea of guilty or otherwise, move in arrest of judgment on the ground that the information does not does not, after any amendment which the court has made and had power to make, state any offence which the court has power to try.*
 - 2) *The court may, in its discretion, either hear and determine the matter during the same sitting, or adjourn the hearing of it to a future time to be fixed for that purpose.*
 - 3) *If the court decides in favour of the accused he or she shall be discharged from that information.*
5. Further, section 242 of the CPA 2009 reads as follows:
- 1) *When any person has been convicted of an offence in a trial before the High Court, the judge may reserve for further consideration any question-*
 - a) *which has arisen in the course of the trial; and*
 - b) *the determination of which would affect the outcome of the trial.*
 - 2) *If the judge reserves any such question, the person convicted shall be remanded to prison or be admitted to bail pending the decision.*
 - 3) *Upon further consideration of a question reserved the judge may affirm or quash the conviction.*
6. The Applicant in his affidavit at paragraphs 7, 13, 14 & 15 deposed as follows:

7. *THAT I can clearly recall that upon questioning by the Honorable Judge in Lautoka High Court the state asked for an amendment of my information but it was never put to me in the due course as it was never amended but a trial date was set due to the states delay on the same and the same is consistent with the court records.*
13. *THAT I further state the information as I was charged upon was never put to me when my trial proper commenced on the 9th September 2024.*
14. *THAT I am not aware as per which information I was tried on as it was never put to me and the state has never disclosed the same to me and it is not consistent with my Pre-Trial instructions to my solicitors as the officer in carriage from the state was not present multiple times and the same is consistent with the court records.*
15. *THAT I further state that I never took plea on the Amended Information reference is made from paragraph 9 or any such information which states two counts of Rape and two counts of Sexual Assault and I am not aware or have such knowledge as I have appeared in all my court dates of such an information which was extracted by my Counsel from the Lautoka High Court Registry after the Ruling for Adjournment dated 26th March 2024 in reference with paragraph 8.*
8. An application under section 239 of CPA 2009 in arrest of judgment can only be made on one ground: the information, after any amendments made by the court that it had the authority to make, does not state any offence that the court has the power to try.
9. The affidavit deposed by the Applicant does not adequately demonstrate to this court how the two counts of Rape under section 207 of the Crimes Act 2009 and Sexual Assault under section 210 of the Crimes Act 2009 are non existent in law.
10. Section 100(3) of the Constitution of the Republic of Fiji reads as follows:
“(3) The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under this Constitution or any written law.”

11. Further, the offences of Rape and Sexual Assault are both indictable offences and pursuant to section 4(1) (a) of the CPA 2009, they are triable in the High Court. The Applicant has failed to demonstrate that this court lacks the authority to try the two offences.
12. There is clearly no evidence indicating that the amended information to which the Applicant entered a plea of not guilty on 25th July 2022 is flawed. The assertion made in the Applicant's affidavit that the amended information was never put to him is false. On 25th July 2022, the record indicates that the Applicant, accompanied by his counsel Mr. A Chand, was present when the amended information was read and explained to him in Hindi. Upon comprehending the four counts, the Applicant entered a plea of not guilty.
13. Furthermore, in accordance with an application under section 242 of CPA 2009, the Applicant has not successfully identified any matter that has emerged during the trial that requires resolution by the court, which matter would influence the trial's outcome. This court has thoroughly addressed all material issues that needed determination during the trial in its judgment, and there are no outstanding matters left to resolve. I have no knowledge of any, and even if one exists, the Applicant has failed to bring it to the court's attention.
14. This application by the Applicant is frivolous and devoid of merit. The application is dismissed.



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Samuela D Qica

Judge

High Court – Sitting in Ba
Thursday, 17th October 2024