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MOHAMMED ASLAM

v.

REGINAM

B

[SUPREME COURT, 1979 (Mishra, J.), 17th May]

Appellate Jurisdiction

Traffic—Leave any vehicle—not confined to derelict.

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A. Singh for Appellant
M. Jennings for Respondent

Appellant was convicted of causing obstruction in a street contrary to the Suva (Control and Use of Streets) By-laws. He appealed against conviction and sentence.

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At hearing it emerged that the Statement of Offence in the summons served on the appellant was for an offence on 19 September, 1978 whereas the Particulars of Offence referred to a date 25 September, 1978. Counsel for the defence said referring to this "I take no point in that". Also the charge referred to subparagraph *(b)* of By-law 3 whereas it should have been to sub-paragraph *(d)*. The Court found that in the way the matter proceeded in the court below, there was not merit in these errors as

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providing a basis for appeal.

Held: The phrase "Leave any vehicle" in the charge and By-law was not confined to leaving derelict vehicles.

Cases referred to:

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Skipper v. R. F.C.A. 70/1978.
Nagy v. Weston (1965) 1 All E.R. 78.
Solomon v. Durbridge 120 JP.231.

MISHRA J.:

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Judgment

Appellant was convicted by the Magistrates Court Suva of causing obstruction on street under the Suva (Control and Use of Streets) By-Laws, 1969 and fined $50, in default 50 days imprisonment. He was also ordered to pay $7.50 costs. He appeals against his conviction on the two main grounds:

"2. That Your Petitioner lawfully parked his vehicles on the side of the road, and did not obstruct any traffic and in any event such parking was not prohibited under the by-laws under which Your Petitioner was charged.

4. That Your Petitioner was charged with the offence on the 19th September, 1978 and your petitioner was finally asked to answer for an offence of a different nature on 25th September and thereby there was a miscarriage of justice." A

He also appeals against sentence on the ground that it is excessive.

At the hearing of the appeal ground 4 was dealt with first. The charge to which the accused was asked to plead was in the following terms:

"STATEMENT OF OFFENCE B

Causing obstruction on Street: Contrary to Sections 122(1) and (3) Act 4 of 1972 and By-Law 3*(b)* Suva (Control and Use of Street) By-Laws 1969.

PARTICULARS OF OFFENCE

Mohammed Aslam s/o Rahamtullah of Vuniivi Street, Tamavua in the Central Division did on 25th September, 1978 cause obstruction at Vuniivi Street by leaving (parking) his heavy goods vehicles on the said road, a prohibited act." C

At the trial the defence produced a summons which had been served upon the appellant (Exhibit D1) in which the typed date "25th" September had been altered by hand to read "19th" September. The rest of the charge was exactly the same. At the end of the prosecution case learned counsel for the defence submitted that the charge was "misconceived" and he said: D

"My copy says 29/9/78 instead. I take no point in that. P.W.1's evidence is valueless. By-law 3*(b)* deals with repairing vehicles. 3*(h)* is the correct one."

It is clear from this that in the light of the evidence there was no confusion in anybody's mind as to the date on which obstruction was alleged to have occurred and prosecution decided to leave their case on that basis. There is nothing in the evidence to show that apart from the date itself accused had faced any charge of a different nature as alleged by ground 4 of the appeal. The only charge to which he pleaded and of which he was convicted was that of causing obstruction on 25th September, 1978. E

The relevant part of the by-law 3 under which the appellant was convicted reads as follows: F

"3. No person shall in any street—

(a) place, leave or deposit or permit to be placed, left or deposited any derelict vehicle, glass, refuse, rubbish or any noisome or offensive matter except in accordance with the provisions of the Suva (Garbage Disposal;) By-Laws;

(b) repair, grease, dismantle or assemble any vehicle otherwise than in the case of an emergency; G

(c) leave any vehicle or any box, crate, barrel or package so as to form an obstruction;

(h) encumber or obstruct such street in any manner not hereinbefore described." H

At the end of the prosecution case it became clear that an error had been made in that reference in the Statement of Offence was to paragraph *(b)* of the by-law 3 which

deals with repairing, greasing, dismantling or assembling. It does not deal with
A obstruction. This was conceded and prosecution admitted that the reference should have been to paragraph *(d)* instead of *(b)*. No amendment however was formally applied for.

There is no merit in appellant's submission that he should have been asked to plead again to the charge once the error had been discovered. No amendment was ever made to the charge and the charge to which he had pleaded remained
B unchanged. There is also no merit in his submission that the words "leave any vehicle" in paragraph *(d)* is intended to mean derelict vehicles, as leaving derelict vehicles in streets is specifically dealt with in paragraph *(a)*.

The Statement of Offence contains a correct reference to the By-laws under which appellant was charged and the number of the by-law creating the offence is also correctly given as "3". Only the numbering of the paragraph was wrong. Even
C that error was discovered in time and no prejudice of any kind has occurred to appellant. Ground 4 therefore cannot succeed (see *Skipper v. R.* Fiji Court of Appeal No. 70 of 1978).

With regard to ground 2, whether or not obstruction was caused is an issue of fact and this Court should not interfere with the finding of the trial Court unless it has acted on a wrong principle. In his submission at the trial learned counsel for the
D defence said:

> "A citizen of Fiji has a right to park his vehicles anyway he likes. He could park them all around Albert Park if he wanted to do. He did not block the road—that is what 'obstruction' means here."

This, in my view, is a rather bold statement but erroneous in law.

E At the hearing of the appeal both counsel agreed that the issue of obstruction would really depend upon whether or not the user of the street in question was an unreasonable one (*Nagy v. Weston* (1965) 1 All E.R. 78. Also *Solomon v. Durbridge* 120 J.P. 231.). In this case, on the day in question, nine heavy goods vehicles were parked on the street so that for a considerable stretch only one lane traffic was possible. This, of course, was not an isolated incident because his own letter (Ex. D3) pro-
F duced by the defence themselves shows that appellant has twenty-two trucks and he habitually uses this street in a quiet residential area as his private parking lot making it impossible for the residents, their guests or the general public to make any use of a very large part of this streeet for very long periods. The learned Magistrate would, in my view, have been wrong if he had decided such a user to be anything but unreasonable. The user was deliberate and persistent with complete disregard for other likely users of the street. Request from City Council Authorities to remove the
G vehicles went completely ignored.

Ground 2, therefore, also fails and the appeal against conviction is dismissed.

As for the maximum fine of $50, appellant has two previous convictions under the same By-laws and on each occasion a fine of $50 was imposed. Learned counsel for the respondent submits, not without some justification, that a mere fine may not
H be an appropriate sentence in case of a persistent offender who operates a large haulage business and to whom a fine of this size may amount to no more than a small charge for the unlawful privilege of using a large part of this street in this residential area as his private parking space.

The appeal against sentence is also dismissed. The Act, it should be noted, does provide a much stiffer penalty for continuing offences of this nature. A

Appeal dismissed.