

**IN THE MAGISTRATE'S COURT AT LABASA**

**CRIMINAL JURISDICTION**

*Criminal Case No. 312 of 2017*

**STATE**

v

**NAVNEET NAVIN KUMAR**

Appearance : **PC Lal** for the prosecution  
**Ms Devi. S** for the accused

Ruling : **3 January 2020**

**RULING**

**NO CASE TO ANSWER**

1. The accused, Navneet Navin Kumar was charged for *Causing A Loss*, contrary to *section 328* of the *Crimes Act*.
2. The particulars of the offence are;-  
*"Navneet Navin Kumar on the 10<sup>th</sup> day of June 2017, at Labasa, in the Northern Division, dishonestly conspired with Chandra Deo and caused \$1,310.00 loss to Anand Krishan Goundar."*
3. The Accused pleaded not guilty to the charge on 21 July 2017. The case proceeded to trial on 25 October 2019.

4. The Prosecutor called two witnesses and closed his case. The Counsel for the accused make an application for no case to answer and filed her submission on 12 November 2019.

#### Application

5. The defence submitted that;-
- a. *There is no evidence to prove that the accused had intention to dishonestly cause a loss to the complainant.*
  - b. *There is no evidence to prove that the accused conspired with Chandra Deo.*
  - c. *The prosecution failed to adduce evidence to prove the essential element of the offence and no tribunal can convict on the evidence of the prosecution.*

#### Law

6. Section 178 of the Criminal Procedure Act state;-
- "If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused"*
7. The test for no case to answer in the Magistrate Court was explained in **Abdul Gani Sahib v The State** [2005] FJHC 95; HAA 022 of 2005; 28 April 2005, as;-
- "In the Magistrate's Court, both tests apply. So the Magistrate must ask himself firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether the Prosecution evidence, taken at its highest, a reasonable tribunal could convict."*

8. Section 328 of the Crimes Act, state;-

(1) A person commits a summary offence if he or she conspires with another person with the intention of dishonesty causing a loss to a third person.

(2) A person commits a summary offence if he or she-

a. conspires with another person to dishonesty cause a loss, or to dishonesty cause a risk of loss, to a third person; and

b. knows or believe that the loss will occur or that there is a substantial risk of the loss occurring.

### **Analysis and determination**

9. Apparent from section 328 that the elements of the offence for subsection (1) is not the same for subsection(2).

10. The elements of the offence under section 328(1) are;-

- (a) the accused,
- (b) conspires with another person,
- (c) with intent,
- (d) to dishonesty causing a loss,
- (e) to a third person.

11. The elements of the offence under section 328(2) are;-

- a. the accused,
- b. conspires with another person,
- c. to dishonesty cause a loss,
- d. to a third person,
- e. knowing that a loss will occur.

12. When the prosecution case was closed, the Prosecutor did not clarify on which sub section the accused is charged with.

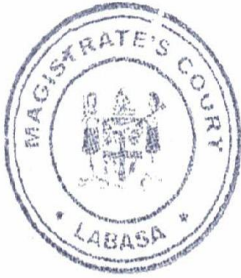
13. The defence in their submission stated that the particulars of the offence shows that the accused is

charge under *section 328(1)* of the *Crimes Act* and as such the accused understood the charge laid against him.

14. The accused is charged for the offence of conspiracy to defraud causing loss. *Section 330* of the *Crimes Act* outlines the requirement for a person to be guilty of the offence and otherwise.
15. One of the requirement under *section 330(1)(a)* is for the accused to have entered into an agreement with one person to defraud the victim. There was no such evidence adduce by the Prosecutor to satisfy this requirement. As such there is no relevant and admissible evidence to prove the element of conspiracy.
16. *Section 330(6)* requires the consent of the Director of Public Prosecution for the offences of conspiracy to defraud. The accused is charged on the same offence. There was no evidence adduce to prove and show that DPP has consented to this charge. As such the charge cannot stand and is null and void.
17. Though there are relevant and admissible evidence on the identity of the accused and the element of dishonesty that cause loss to the victim. There are also evidence on the accused intent and knowing that a loss will occur. The prosecution case falls on the element of conspiracy as discussed above.
18. The element of conspiracy are element in both *subsection (1)* and *subsection (2)*. Whatever subsections the accused is charge with, the application for no case to answer will succeed on the short fall of evidence on conspiracy.

19. The application made by the defence is made out. However based on the requirement for the consent of the DPP, I find that the charge is null and void.

**28 days to appeal**



A handwritten signature in blue ink, appearing to read "Kilmer", enclosed within a blue oval scribble.

C. M. Tuberi  
**RESIDENT MAGISTRATE**