

IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Criminal Case No. 272/2024

BETWEEN: **STATE**

PROSECUTION

AND: **ANIKET KEWAL APLESH MANI**

FIRST ACCUSED

AND: **JAINESH SHIVNIEL MURTI**

SECOND ACCUSED

Counsel: Sergeant 4971 Veni Vunaki for Police Prosecution
 Mr. N. Chand o/i of Prakashan Lawyers for the First Accused.
 Ms. S. Singh for the Second Accused.

Date of Sentence: 22 May 2025

SENTENCE

Introduction

1. Mr. Aniket Kewal Aplesh Mani ('the First Accused') was produced in Court with another on 4 July 2024 charged with 1 count of Unlawful Possession of Illicit Drugs namely Cannabis Sativa with this being Criminal Case No. 278/24.
2. Mr. Jainesh Shivniel Murti ('the Second Accused') was produced in Court on 21 June 2024 charged with 1 count of Unlawful Possession of Illicit Drugs namely Methamphetamine with this being Criminal Case No. 248/24.
3. On 18 March 2025, Prosecution filed an Amalgamated charge amalgamating Criminal Case No. 248/24 into Criminal Case No. 278/24. The Amalgamated charge filed saw the First and Second Accused with another being charged for 1 count of Unlawful Possession of Illicit Drugs namely Cannabis Sativa and the Second Accused being charged alone for another count of Unlawful Possession of Illicit Drugs namely Methamphetamine.
4. After further consideration, on 20 May 2025, Prosecution filed an Amended Charge wherein the First Accused was charged with 1 count of Unlawful Possession of Illicit Drugs namely Cannabis Sativa and the Second Accused was charged with 1 count of Unlawful Possession of Illicit Drugs namely Methamphetamine. The particulars of the offences are:

Count 1
Statement of Offence

Unlawful Possession of Illicit Drug: *Contrary to Section 5(a) of the Illicit Drug Control Act 2004.*

Particulars of Offence

Aniket Kewal Aplesh Mani, on the 19th day of June 2024 at Tuvu, Ba in the Western Division, without lawful authority possessed 0.1 grams of Cannabis Sativa, an illicit drug.

Count 2
Statement of Offence

Unlawful Possession of Illicit Drug: *Contrary to Section 5(a) of the Illicit Drug Control Act 2004.*

Particulars of Offence

Jainesh Shivneel Murti, on the 19th day of June 2024 at Tuvu, Ba in the Western Division, without lawful authority possessed 0.042 grams of Methamphetamine, an illicit drug.

5. On 20 May 2025, after the above charge was read and explained to both Accused in their preferred language of Hindi and both Accused confirmed that they understood the charges against them, they entered a Guilty plea.
6. I am satisfied that both Accused have fully comprehended the legal effect of their plea and that their plea was voluntary and free from influence, I now convict both the Accused and proceed to sentence them.

Circumstances of the offending

7. According to the Summary of Facts you admitted in Court, on 19 June 2024, PC Rahman with PC Kunal were conducting a snap check at Tuvu, Ba when they stopped vehicle registration number IW134 which was driven by the Second Accused whilst the First Accused was sitting at the back passenger seat.
8. Whilst checking the licence of the Second Accused, PC Rahman discovered that it was expired. PC Kunal noticed both the Accused were acting in a suspicious behaviour. PC Kunal requested both Accused to step out of the vehicle and informed that a search of the vehicle would be conducted.
9. Whilst searching the vehicle, PC Kunal found a Surker brand trimmer box inside the back pocket of the front passenger seat which contained 2 tissue paper, 1 smoking apparatus (tube), 1 clear ziplock plastic containing white crystals believed to be methamphetamine with a white zig zag paper containing dried leaves believed to be marijuana.
10. PC Rahman and PC Kunal arrested both Accused and escorted them to Ba Police Station to report the matter.
11. The samples were taken to the Chemistry Lab in Lautoka for analysis where it was confirmed that the white crystal substance was tested positive as methamphetamine with a weight of 0.042 grams whilst the dried loose leaves tested positive as Indian Hemp botanically known as cannabis sativa with a weight of 0.1 grams.
12. Both Accused were interviewed under caution where the First Accused admitted that the marijuana belonged to him whilst the Second Accused admitted that the methamphetamine belonged to him. They were then both charged.

Sentencing Regime

13. The maximum penalty for this offence is a fine not exceeding \$1 million or imprisonment for life or both.
14. His Lordship Justice Temo in ***Kaitani v State*** Criminal Petition No. CAV 011 of 2023 (29 October 2024) proposed the following 5 categories with the suggested tariffs, which is now the guideline followed by all courts when sentencing for any offence pertaining to cannabis sativa:

(i) Category 1: (0 gram to 1000 grams/1kg)

*Possession/cultivation/offending verbs of cannabis sativa. Like ***Sulua v State***, a non-custodial sentence is to be given in this category. With recent discovery of 4 tons of methamphetamine in Nadi earlier this year, there is no need for the State to waste its resources on this category. The cases can be disposed by fines, community services, counselling, discharge with a strong warning etc. Only in the*

worst cases, should a suspended prison sentence or a short sharp prison sentence be considered.

(ii) **Category 2 (1 kg to 5 kg)**

Possession/cultivation/offending verbs of cannabis sativa. Tariff should be a sentence between 1 to 4 years imprisonment, with liberty to the Trial Magistrate/Judge to sentence at what level of the tariff, depending on the mitigating and aggravating factors.

(iii) **Category 3 (5 kg to 10 kg)**

Possession/cultivation/offending verbs of cannabis sativa. Tariff should be a sentence between 4 to 8 years imprisonment, with liberty to the Trial Magistrate/Judge to sentence at what level of the tariff, depending on the mitigating and aggravating factors.

(iv) **Category 4 (10 kg to 150 kg)**

Possession/cultivation/offending verbs of cannabis sativa. Tariff should be a sentence between 8 to 16 years imprisonment, with liberty to the Trial Magistrate/Judge to sentence at what level of the tariff, depending on the mitigating and aggravating factors.

(iv) **Category 5 (150 kg and above)**

Possession/cultivation/offending verbs of cannabis sativa. Tariff should be life imprisonment, with liberty to the Trial Judge to fix a minimum term, depending on the aggravating and mitigating factors, from which to apply for a pardon from His Excellency the President.

15. With respect to methamphetamine in **Abourizk v State** Criminal Appeal No. AAU0054 of 2016; 0059 of 2016 and 0062 of 2016 (7 June 2019) at paragraph 145 His Lordship Justice of Appeal Prematilaka discussed the sentencing guideline for hard drugs in Fiji and stated:

"[145] Having considered all the material available and judicial pronouncements in Fiji and in other jurisdictions, I set the following guidelines for tariff in sentences for all hard/major drugs (such as Cocaine, Heroin, and Methamphetamine etc.). These guidelines may apply across all acts identified under section 5(a) and 5(b) of the Illicit Drugs Control Act 2004 subject to relevant provisions of law, mitigating and aggravating circumstances and sentencing discretion in individual cases.

Category 01:- Up to 05g – 02½ years to 04½ years' imprisonment.

Category 02:- More than 05g up to 250g – 03½ years to 10 years' imprisonment.

Category 03:- More than 250g up to 500g – 09 years to 16 years' imprisonment.

Category 04:- More than 500g up to 01kg – 15 years to 22 years' imprisonment.

Category 05:- More than 01kg – 20 years to life imprisonment."

16. In **Kreimanis v State** [2023] FJSC 19; CAV13.2020 (29 June 2023) His Lordship Chief Justice Temo stated that the above sentencing tariff was still applicable.

Mitigating and Aggravating Factors

17. The Court notes the mitigation offered by the counsels for both Accused, however, personal circumstances holds low mitigatory value.

18. The Court is aware that both Accused have taken an early guilty plea which highlights their genuine remorse for their actions which is also reflected by their cooperation with the Police during the time of their interviews.
19. Further, the Court was informed that both Accused were young first offenders with no previous convictions.
20. There are no discernible aggravating factors in this matter other than the factors subsumed in the elements of the offence.

Application for Non-Conviction for the First Accused

21. In submissions provided verbally, the counsel for the First Accused has urged this Court to exercise its discretion under section 16(1) of the Sentencing and Penalties Act in not recording a conviction and pursuant to section 15(1)(f) of the Sentencing and Penalties Act, order a fine without recording a conviction.
22. In Galodamu v State Criminal Appeal Case No. HAA 4 of 2024 (13 September 2024) His Lordship Justice Rajasinghe whilst dealing with an appeal pertaining to the entering of a non-conviction succinctly stated:

28. ...it is my view, based on the above-discussed findings, that the convicting of the Accused under Section 174 (2) of the Criminal Procedure Act has a different meaning than the conviction or non-conviction referred to under Section 15 and Part 9 of the Sentencing and Penalties Act, that it is not necessary to term the convicting of the Accused under 174 (2) of the Criminal Procedure Act as a conviction not recorded, if the Sentencing Court subsequently opted to record a non- conviction pursuant to Section 15 or Part 9 of the Sentencing and Penalties Act.

29. Regarding this appeal, I observe that the learned Magistrate did not convict the Appellant before she proceeded to sentence him. She only found him guilty as charged at the beginning of the sentence, which is not technically incorrect (vide; paragraph 5 of the Sentence). **However, I propose that it is a good practice to use the exact wording as stipulated under Section 174 (2) of the Criminal Procedure Act, i.e. to convict the Accused before embarking on the sentencing of the Accused under the Sentencing and Penalties Act.**

30. It is evident that the consequences of recording non-conviction under Section 15 (1) (f) are distinctly different from the consequences of Sections 15 (1) (e) (i) and (j) and 45 of the Sentencing and Penalties Act.

31. The Supreme Court of Fiji in R R Latchan v The State - SC Crim - CAV0005.2023 - 29.08.24 discussed the effect of Section 15 (1) (f) of the Sentencing Penalties Act, where Qetaki J observed that:

"48. As well, the effect of an order under section 15 (2) (f) of the Sentencing and Penalties Act, needs to be clarified. The provision relates to situations where the accused person/ offender has been: (i) found guilty, and (ii) the court has ordered either that the conviction be recorded or that the conviction be not recorded, and (iii) subject to the order made (conviction recorded or otherwise), the offender is ordered to pay a fine."

32. Accordingly, the Accused is still required to pay a fine if the Sentencing Court records a non-conviction under Section 15 (1) (f) of the Sentencing and Penalties Act, which follows a term of imprisonment if the Accused defaulted the paying of the fine. (vide; Section 37 of the Sentencing and Penalties Act).

33. Gates CJ in State v Batiratu [2012] FJHC 864; HAR001.2012 (13 February 2012) outlined the factors that need to be considered if the sentencing Court envisages a discharge of the Accused without conviction, where Gates CJ outlined that:

[29] The effect of the cases and the purport of the more detailed provisions of the Sentencing and Penalties Decree with regard to discharges can be summarized. If a discharge without conviction is urged upon the court the sentencer must consider the following questions, whether:

- i. The offender is morally blameless.
2. Whether only a technical breach in the law has occurred.
3. Whether the offence is of a trivial or minor nature.
4. Whether the public interest in the enforcement and effectiveness of the legislation is such that escape from penalty is not consistent with that interest.
5. Whether circumstances exist in which it is inappropriate to record a conviction, or merely to impose nominal punishment.
6. Are there any other extenuating or exceptional circumstances, a rare situation, justifying a court showing mercy to an offender.

34. I am conscious that the effect of the discharge without a conviction materially differs from that of a fine without a conviction. Qetaki J in **R R Latchan v The State - (supra)** distinguished the Batiratu guidelines from Section 15 (1) (f) of the Sentencing Penalties Act, where His Lordship observed that:

"46) It is important to note that, whilst Batiratu and the legal and sentencing principles pronounced there are important and helpful, the case is distinguishable as the factors directly relate to the application of section 45 (Release without conviction) of the Sentencing and Penalties Act. The facts and circumstances of that case are also different from the present, involving an offender who had assaulted a police constable while on duty. The Magistrate had imposed a bond of \$500 for the offender to maintain peace and good behaviour for 2 years, without recording a conviction. The sentence was given under section 45(2) of the Sentencing and Penalties Act 2009. The subsection (2) states:

"A court, on being satisfied that a person is guilty of an offence, may (without recording a conviction) adjourn the proceedings for a period of up to 5 years and release the offender upon the offender giving an undertaking to comply with the undertaking to comply with the conditions applying under subsection (2), and any further conditions imposed by the court."

35. After considering the factors enunciated under Section 16 (1) (a) (b) and (c) of the Sentencing and Penalties Act, which I discuss below, Qetaki J in **R R Latchan v The State - (supra)** still considered the Batiratu guidelines in making the decision regarding a recording of non-conviction with a fine under Section 15 (1) (f) of the Sentencing and Penalties Act. Therefore, I find Batiratu guidelines could be applied *mutatis mutandis* when the Sentencing Court envisages recording a non-conviction with a fine pursuant to Section 15 (1) (f) of the Sentencing and Penalties Act.

23. Given the discussion in **Latchan v State** Criminal Appeal No. CAV 0005 of 2023 (29 August 2024) as cited in **Qalodamu** [supra], along with section 16(1) of the Sentencing and Penalties Act, the Court can also apply the Batiratu guidelines when considering recording a non-conviction with a fine pursuant to section 15(1)(f) of the Sentencing and Penalties Act.

24. Turning to the case herein, I will consider the factors accordingly.

Nature of the Offence

25. Counsel for the First Accused did not address the Court on this but stated that the amount of cannabis sativa found in the First Accused's possession was minimal.

26. The Court is aware that the First Accused was only found with 0.1 grams of cannabis sativa and was further informed that this small amount was for the First Accused's personal consumption.
27. The issue of hard drugs has now plagued our small country to the point of no return to what the country once was. Courts are coming down hard on offenders found in possession of methamphetamine whilst being lenient with those found in possession of cannabis sativa especially when they are young, first offenders found with a minuscule amount of cannabis sativa.
28. As such, the Court finds that offence with which the First Accused has been charged with is personal or private in nature with there being no detrimental effect on any persons when he committed this offence.

Character and History of the Offender

29. The Court was informed that the First Accused is a first offender and has maintained this unblemished character for 26 years.

Impact of a Conviction on the Offender's Economic or Social Well-being and on the Offender's Employment Prospects.

30. The First Accused is currently working as a truck driver with Fiji Water and earns about \$400 per week which allows him to support his parents.
31. The Court has been informed that the First Accused has plans to move to New Zealand and that he is considering moving to allow him to find better employment opportunities. With a conviction being entered, it is submitted that it could have a detrimental effect on the First Accused's ability to migrate and find gainful employment.
32. The First Accused has not provided any substantial evidence that his employment prospects will be truly affected. A mere statement that the conviction might affect him in such a manner is not sufficient (vide Qalodamu [supra]).

Batiratu Guideline

33. Turning to the *Batiratu* guideline, the Court finds:
- i. the offence was trivial in nature especially as the First Accused was only found in possession of 0.1 grams of cannabis sativa;
 - ii. the public interest will not be adversely affected given that this offending is trivial in nature and no one was hurt or injured due to the First Accused actions; and
 - iii. the effects of recording a conviction is disproportionate to the breach;

Sentence

First Accused


34. Considering the discussion in paragraphs 21-33 herein and considering this is a category 1 offending under *Kaitani* [supra], the Court finds that a conviction is not to be recorded pursuant to section 15(1)(f) of the Sentencing and Penalties Act and a fine of \$200.00 is ordered.
35. The fine of \$200.00 is to be paid within 1 month from the date of this Sentence. If the First Accused defaults in payment of his fine, he will be imprisoned for 20 days pursuant to section 37(1) of the Sentencing and Penalties Act.

Second Accused

36. Considering the prevalent nature of being found in possession of methamphetamine especially with the drug burst of 4.15 tons of methamphetamine in Nadi, I find the objective seriousness of this crime is high.



37. Further, considering that the primary purpose of this sentence is founded on the principle of deterrence. It is the responsibility of the Court to deter others from committing such offences of the same or similar nature as well as to protect the community from those who commit such offences.
38. A deterrent sentence for such offences of this nature demonstrates the gravity of the offence and reflects the society's immediate denouncement of such crimes.
39. Given the objective seriousness and the sentencing purpose herein, I select 35 months as the starting point.
40. For the Second Accused's mitigation being that he is 22 years with no prior conviction, I deduct 5 months. For the Second Accused's early guilty plea which highlights his genuine remorse, I will deduct a further 8 months leaving him with a balance of 22 months imprisonment.
41. Section 18(3) of the Sentencing and Penalties Act provides the Court with the discretion to fix a non-parole period if the imprisonment term is less than 2 years but more than 1 year. Considering the Second Accused's previous good character and the chances of rehabilitation, I decline to fix a non-parole period.
42. Further, the Court is mindful that the Second Accused has been in custody from 13 December 2024 until the date of this Sentence which is 160 days or 5 months 9 days.
43. Considering section 24 of the Sentencing and Penalties Act, 5 months will be considered as time served by the Second Accused.
44. Thus, the Second Accused's actual sentence to be served is now 17 months.
45. Any party aggrieved with this decision has 28 days to appeal to the High Court


N. Mishra
Resident Magistrate

