IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA

APPELLATE JURISDICTION

ACTION NO. 88 OF 1979

BETWEEN : REGINA APPELLANT

A N D : RAM NARAYAN SHARMA s/o Ram Charan RESPONDENT

Mr D Williams Counsel for Appellant

Mr Pillai Counsel for Respondent

JUDGMENT

This is prosecution's appeal against the ruling of a magistrate of no case to answer on a criminal charge.

The charge was that Ram Narayan drove a motor vehicle on 12th July 1979 whilst under the influence of alcohol to the extent of not having proper control.

There was a second count of dangerous driving on which the magistrate did record a conviction.

Following the submissions of principal crown counsel, Mr D Williams, made on the appeal the respondent's counsel, Mr Pillai, said that the petition of appeal did not appear to have been lodged in accordance with the provisions of S.289 (1) of the C.P.C., the relevant portion of which states that "no appeal shall lie against an order of acquittal except by or with the sanction in writing of the Director of Public Prosecution".

If the written sanction did exist no doubt crown counsel would have tendered it at the outset; alternatively the petition of appeal would be signed by the D.P.P. There is nothing in the record to reveal any sanction by the D.P.P. and his signature does not appear on the petition.

At the top of the petition is a statement which reads-

"The Petition of the Director of Public Prosecution sheweth:-"

It is signed at the end as follows:-

"Dyfed Williams, Counsel for the Petitioner"

On the rear of the outer cover the address of the petitioner is shown as:-

"Office of the Director of Public Prosecutions,
P O Box 440
Lautoka".

Mr D Williams stated that it was not the practice to send appeals to Suva for the D.P.P.'s signature.

One might argue that a finding of no case to answer is not really an acquittal in that it is really a question of law as to whether or not sufficient evidence has been adduced by the prosecutor to put the accused on his defence. In countries including England where no appeal is allowed against an acquittal following a full trial the prosecutor can nevertheless appeal against a finding of no case to answer, and if the appeal is successful the lower court will be ordered to call upon the accused to make out his defence. That procedure indicates that a finding of no case to answer is not tantamount to an acquittal. Such an approach is perhaps a trap for the unwary under the Fiji C.P.C. in that S.200 thereof states:-

"200. 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 an accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit the accused."

Although the D.P.P. has power to delegate certain powers to Crown Counsel there is no provision for him to delegate his powers under S.289(1) of appealing against an acquittal.

It would seem that Mr Pillai's submission is well founded. Although Mr Dyfed Williams is more than sufficiently capable and experienced to determine whether there is a case to be argued, and to set out the grounds of an appeal against an acquittal his action requires the D.P.P.'s sanction.

Where crown counsel is frequently petitioning on matters which do not require the D.P.P.'s sanction it is not unlikely that the occassion may arise when crown counsel overlooks the fact that a particular appeal does require such sanction.

It appears in the circumstances that in the absence of the D.P.P.'s sanction the appeal does not lie.

Accordingly I direct that the petition be struck out.

(Sgd) J T Williams
JUDGE

LAUTOKA
February, 1980