

IN THE SUPREME COURT OF FIJI  
Appellate Jurisdiction  
Criminal Appeal No. 99 of 1980

000098

Between:

THE DIRECTOR OF PUBLIC PROSECUTIONS Appellant

and

CHANDRIKA PRASAD  
s/o Sukhan

Mr. A. Gates for the Appellant.  
Mr. H. Lateef for the Respondent.

JUDGMENT

This is an appeal by the Director of Public Prosecutions against the acquittal in the Suva Magistrate's Court of the respondent on a charge of parking a taxi on a road other than on a taxi stand contrary to Order 9 of the Suva Traffic Order, 1971 and section 88(3) of the Traffic Act (Cap.152).

The ground of appeal avers that the learned magistrate was wrong in law in holding that the accused (respondent) was not parking his motor vehicle as a taxi whilst parking in a meter bay and whilst awaiting a vacant place to park in the taxi stand.

The facts found by the learned magistrate show that on 22nd April 1980 the respondent, a taxi proprietor, was seen parking his taxi in a meter bay by Police Constable 1033 Diven Narayan who booked him for alleged contravention of Order 9 of the Suva Traffic Order 1971. The respondent parked his taxi in the meter bay while waiting to move into a taxi stand nearby which at the time had no parking space available for any other taxis. There were only four bases for taxis on that particular stand.

The respondent claimed in evidence that when he parked his taxi in the meter bay he was not plying for hire and would have refused to take on passengers if approached to do so. This evidence was accepted by the learned magistrate who in consequence acquitted the respondent on the basis that such evidence disproved the prosecution allegation that respondent was operating his taxi from a meter bay contrary to Order 9 of the Suva Traffic Order, 1971.

Order 9 provides as follows:

"9. Subject to the other provisions of this Order, the driver of a taxi shall not permit such taxi to stop or park on any road or part thereof other than a taxi stand except -

- (a) for the purpose of taking on or discharging passengers and their baggage, or while waiting for passengers who shall have engaged such taxi, or while the driver is otherwise attending to the requirements of the hirer of the taxi, and in any such case for a period of no longer than fifteen minutes; or
- (b) while the driver of a taxi is obtaining a meal.

The above Order prohibits with certain specified exceptions any taxi from stopping or parking on any road other than a taxi stand. As formulated the order, so it seems to me, creates an offence of absolute liability. For that reason in my opinion evidence of whether or not a taxi was at the material time plying for hire was quite immaterial. If this construction is correct as I believe it is then an offence under Order 9 would be committed once it is proved that a taxi was parking in a meter bay or some other part of the road other than on a taxi stand and that none of the specified exceptions applied. This construction commends itself to this court because it is the only construction which would give due effect to the strict words of Order 9. The construction which found favour in the court below would have the effect of permitting all taxis to operate from any part of the road in the City of Suva upon an easy pretext that they were not plying for hire thereby rendering the mandatory

provisions of the Order completely nugatory.

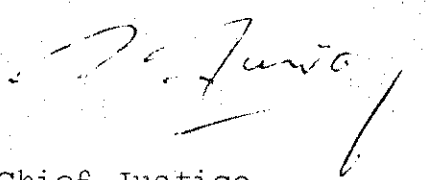
Under section 2 of the Traffic Act a "taxi" is defined as a public service vehicle licensed to carry not more than six passengers excluding the driver and a "public service vehicle" is defined inter alia as a motor vehicle which plies for the carrying of passengers for hire or reward whether on an isolated occasion or otherwise. As a public service vehicle a taxi carries a fixed attribute that it is a vehicle specially intended for hire to members of the public. This attribute is affixed by law and cannot be changed at the court's discretion. Thus when a taxi is found in the City parking on a road other than a taxi stand and none of the specified exceptions to the Order applies as respondent's taxi was on the day in question the conclusion of law is that it was there for the purpose of hire and any refutation of this on the part of the driver would have no legal consequence. For this reason I think the learned magistrate was wrong in allowing the court to entertain respondent's evidence on the question of whether or not he was plying for hire when he was booked by the police constable. Such evidence was clearly immaterial.

I am satisfied that on the evidence disclosed in this case the respondent did contravene Order 9 when he parked his taxi in the meter bay whilst waiting to move into a taxi stand nearby. This appeal will therefore be allowed. The order entered in the court below acquitting the respondent is set aside. I find respondent guilty as charged and convict him accordingly.

In deciding the sentence in this case I take into account the fact that there are not as nearly enough taxi stands in the City to provide for all the parking needs of the taxi industry. The present law made in 1971 clearly did not contemplate the rapid increase that has taken place in the number of taxis now plying the roads of Suva. This is a matter that must sooner or later be straightened out by the authorities concerned. I do not think it would be reasonable

to expect taxi drivers and owners to comply with Order 9 because more often than not it is simply impossible to do so because of the large excess of taxis over what is available in the way of taxi stands in and around the City. Viewed in this context Order 9 will be seen as a piece of archaic legislation which is definitely out of touch with the times. Clearly therefore this is not a case of open breach of the law. The offence was only committed because the taxi industry has been placed in an impossible position in regard to compliance with Order 9. In these circumstances I shall treat the offence committed by the respondent as merely technical and sentence him accordingly.

The respondent is fined \$1 or 2 days' imprisonment.

  
Chief Justice

SUVA,  
16th January, 1981.