IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
Criminal Appeal No. 4 of 1984

000193

Between:

BHAGWAT PRASAD S/O MAHA DEO — Appellant

and

REGINAM — Respondent

Mr. H. Patel with Mr. Prasad for Appellant
Mr. D. Fatiaki for Respondent

JUDGMENT

On 1st November, 1983 in the Suva Magistrate's Court appellant pleaded guilty and was convicted on two counts, namely in the first count of driving a motor vehicle other than the class to which he was entitled contrary to section 35(4) and (5) and 85 of the Traffic Act and was fined $20 or 20 days in default; and in the second count of driving a motor vehicle in contravention of the third party policy risk contrary to section 4(1)(2) of the Motor Vehicle Third Party Insurance Act and was fined $50 or 50 days in default and in addition was disqualified from holding a driving licence for a period of one year.

In this appeal two questions were raised on behalf of appellant. The first was raised under grounds of appeal (d) and (e) which read as follows:

"(d) The learned trial Magistrate erred in law and in fact when he failed to specify in his judgment in respect of which conviction, he ordered the disqualification from holding or possessing a driving licence for a period of one year. Hence there has been a substantial miscarriage of justice.

(e) The learned trial Magistrate erred in law and in fact when he failed to specify the offences of both the convictions in his judgment and the sections of the Traffic Ordinance (Chapter 152) and the Motor Vehicle Third Party Insurance

Ordinance (Chapter 153) under which the appellant was convicted in relation to the said convictions. Hence there has been a substantial miscarriage of justice."

In his argument counsel for appellant relied on section 155(2) of the Criminal Procedure Code which states:

"In the case of a conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted, and the punishment to which he is sentenced."

Counsel referred to the case of Tanoa Naiceru v. R.9 F.L.R. 48 in support of his contention that the Court should specify in respect of which conviction he orders disqualification and according to counsel this was not done in this case and hence there has been a substantial miscarriage of justice.

In my respectful opinion the contention advanced on this question is entirely without merit. In my view this point is covered by the proviso to section 155(1) of the Criminal Procedure Code which reads:

"Provided that where the accused person has admitted the truth of the charge and has been convicted, it shall be sufficient compliance with the provisions of this subsection if the judgment contains only the findings and sentence or other final order and is signed and dated by the presiding officer at the time of pronouncing it."

This proviso applies generally to criminal judicial investigations. However, so far as Magistrates' Courts are concerned the matter is also dealt with under section 206(2) of the Criminal Procedure Code which provides:

"If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there shall appear to it sufficient cause to the contrary."

It is apparent from the record that the learned Magistrate had done all that was necessary under the aforesaid provisions. His note on the record which is clear and unequivocal reads:

> "I find the accused guilty of both charges, convict him and sentence him on Count 1 to pay a fine of $20 in default 20 days.
>
> $50 on Count 2 - default 50 days.
>
> Accused is prohibited from holding or possessing a driving licence for one year."

However, if I am wrong in this conclusion, I would apply the proviso to section 319(1)(a) of the Criminal Procedure Code that no substantial miscarriage of justice has occurred.

The second question for decision was raised under ground of appeal (c) which is in these terms:

> "The learned trial Magistrate erred in law and in fact when he failed to exercise his discretion under section 29(1)(b) of the Traffic Act (Chapter 152) to limit the disqualification to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed in lieu of disqualifying the appellant from holding or obtaining any driving licence. Hence there has been a substantial miscarriage of justice."

The point is conceded by counsel for respondent who agrees that a blanket disqualification order such as was made against appellant was in the circumstances not justified.

I accept that the order of disqualification should be confined to the class of vehicle concerned in the offence, namely a motor cycle. The appellant is by employment a bus driver from which he derives his livelihood. I am satisfied that it was wrong in principle to impose on him a general disqualification from driving.

Accordingly the appeal is allowed to the extent only that the order of disqualification from driving made in the Court below is set aside and in lieu thereof an order of disqualification in respect of driving a motorcycle is substituted.

Chief Justice

Suva,
2nd March 1984.