

IN THE SUPREME COURT OF FIJI

Criminal Jurisdiction

Criminal Case No. 36 of 1984
(Magistrate's Court Case No. 822/84)

R E G I N A

v.

SETAREKI KAULOTU

For the Crown: Mr. G. Leung, Crown Counsel.
For the Accused: In Person.

O R D E R

The accused appeared before the Resident Magistrate's Court at Suva charged with five offences. He pleaded guilty to the first of those offences, namely escaping from lawful custody contrary to section 138 of the Penal Code. He initially elected to be tried by the Magistrate's Court on the other four counts, then after a change of mind in the matter elected to be tried by the Supreme Court, when the learned Resident Magistrate conducted a preliminary inquiry. Thereafter the Resident Magistrate committed the accused to the Supreme Court for trial in respect of the latter four offences. In respect of the first offence however i.e. escaping from lawful custody, in respect of which the accused had pleaded guilty, the learned Resident Magistrate observed :

"The accused has pleaded guilty. He is committed for sentence."

"The accused is committed for trial to

the Supreme Court on said charges
in counts 2, 3, 4 and 5
and for sentence on count 1."

Section 222(1) of the Criminal Procedure Code
reads as follows :-

"222.-(1) Where a person, being not less than seventeen years of age, is tried by a resident magistrate for any offence, and such person is convicted by such magistrate of that offence, or of any other offence of which he is liable to conviction under the provisions of this Code then, if, on obtaining information as to his character and antecedents, the magistrate is of opinion that they are such that greater punishment should be inflicted in respect of the offence than the magistrate has power to inflict, the magistrate may, in lieu of dealing with him in any manner in which the magistrate has power to deal with him, commit him in custody or on bail to the Supreme Court for sentence in accordance with the following provisions of this section."

The accused is apparently not less than 17 years of age. There was no finding in the court below, based on an agreed statement of facts, revealing a prima facie case, and no conviction, so that the question of sentence does not arise.

There can be no question of the magistrate forming an opinion in the matter of sentence until such time as he has obtained "information as to his (the accused's) character and antecedents:" no such information was before the learned Resident Magistrate, as of course a conviction had not been recorded.

Further, the powers under section 222(1) may only be exercised where -

"the magistrate is of opinion that they (i.e. accused's character and antecedents) are such that greater punishment should be inflicted in respect of the offence than the magistrate has power to inflict."

The learned Resident Magistrate in the present case did not consider, and could not have considered, the accused's character and antecedents. Again, the offence of escaping from lawful custody contrary to section 138 of the Penal Code is a misdemeanour and is therefore, under section 47 of the Penal Code punishable by a maximum sentence of two years' imprisonment or with a fine or both. The learned Resident Magistrate has the power to impose a maximum sentence of five years' imprisonment and a maximum fine of \$1,000, which, in terms of imprisonment, well exceeds the figure attracting the maximum sentence of imprisonment by default, under section 35(2) of the Penal Code. It cannot therefore be said, under any circumstances, that the accused's character and antecedents in the present case "are such that greater punishment should be inflicted in respect of the offence than the magistrate has power to inflict", as of course the learned Resident Magistrate has the power to impose the maximum sentence.

Quite clearly the committal for sentence is a nullity. I hereby remit the case back to the Resident Magistrate's Court at Suva for continued trial in respect of the first count of escaping from lawful custody.

Delivered in Open Court At Suva This 19th Day of March, 1985.


(B.P. Cullinan)
JUDGE