

REGINA -v- JACK LAE

CRC No. 72/92 CMC

JUDGMENT ON REVIEW

MURIA J: This case has been sent to me for review by the learned Principal Magistrate.

The accused pleaded guilty to a charge of dangerous driving contrary to section 38 of the Traffic Act and the Magistrates' Court fined him \$200 and disqualified him from driving for 6 months. The learned Principal Magistrate thought that he was wrong to order only 6 months disqualification which he said it should have been 12 months since he could not find any special reasons.

The offence under section 38 of the Traffic Act only attracts mandatory disqualification if the offence is committed within three years after a previous conviction of an offence under that section or under section 37. However, in the present case the record shows that the accused has no previous conviction and that he clearly has never been convicted of the offence either under section 38 or 37 of the Act within the last three years. As such the disqualification in such circumstances is discretionary having come within Part II, paragraph 8 of the Schedule and the requirement of "*special reason*" under section 28(1) is not necessary. The Court has the power to order him "*to be disqualified for such period as the court thinks fit*" as provided under section 28(2).

The learned Principal Magistrate sent this case to me for review, not because he thought he had exercised his discretion wrongly but because he thought that it was mandatory that he should order a 12 months disqualification. Since the case falls under section 28(2) of and Part II of the Schedule to the Act I do not find any error when the

learned Magistrate exercised his discretion and ordered the accused to be disqualified from driving for 6 months.

The order made by the learned Magistrate on 21 January 1992 stands.

(G. J. B. Muria)

JUDGE