

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA (CRIMINAL DIVISION)

CR NOS. 470/01,471/01

POLICE

V

Sgt Howard for Police

Mr A McDonnell for Defendant

Date of hearing: 24 June 2002

Date of decision: 24 June 2002

DECISION OF GREIG CJ

This is the second case this morning in which I am asked under s. 46 of the Criminal Procedure Act to grant leave on an application by the Police to withdraw an information or informations.

In this case there are two informations, one of indecently assaulting a woman over the age of 16 and the other of assaulting that woman. The events occurred on the 28th of August last year. The accused and the complainant are both involved in the police force in the Cook Islands. The events are alleged to have occurred in the course of police duties on the night in question when they were on patrol over the night hours. The complainant laid a complaint with the police and a statement was taken from her and there was also evidence of a recent complaint. The accused provided a statement himself which may or may not be admissible in evidence I have not seen it. It is what is usually described as a self serving statement.

The matter has been before the Court on a number of occasions and it has now come to this application for withdrawal. The complainant herself has written or signed a letter which it appears was prepared in the police station. It sets out what purports to be six reasons for the withdrawal of the complaint but basically the only reason which would have any validity is that the complaint says that she tends to forget the events of last August and is in effect unwilling to give evidence. There is no suggestion that she was persuaded against that view or decision and it is not one which has really been tested in any event.

This is another case of which there is in my view very little reason for the withdrawal of the case. There are a number of rather important matters arising out of it but with the greatest reluctance I have decided that it is appropriate to give leave to withdraw the case in the knowledge of course that this does not mean that the matter is finally closed. There will be an order therefore granting leave to withdraw.

The name of the complainant will be suppressed and will continue to be suppressed and in the circumstances with some reluctance there will be an order for suppression of the name of the accused as well.

A handwritten signature in black ink, appearing to read 'L. G. CJ', is written above the printed title.

CHIEF JUSTICE