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IN THE COURT OF APPEAL, FIJI ISLANDS

AT SUVA

CRIMINAL APPEAL NO. AAU0065 OF 2007
(Criminal Appeal No. HAA 59 of 2007L)

BETWEEN : ASESELA RATU

Appellant

AND : THE STATE

Respondent

Coram : The Hon. Justice Devendra Pathik
Judge of Appeal

Counsel : Appellant – In Person

: Ms. A. Driu for the Respondent

Date of Hearing & Ruling : 18th January 2008

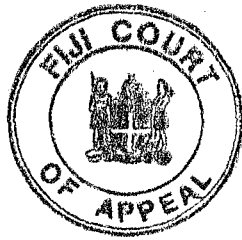
Ruling
(Leave to Appeal)

- [1] The Appellant in his application for Leave to Appeal raises a point of law, namely, whether the Learned Magistrate was right in dealing with him under the **Dangerous Drugs Act, Cap. 114** as charged **instead** of under the **Illicit Drugs Control Act 2004** (which commenced on 9.7.04, vide L.N 55/04).

- [2] The Appellant was charged with "*Trafficking Indian Hemp contrary to section 8(b) of the Dangerous Drugs Act, Cap. 114 and section 3 of the Dangerous Drugs Act as amended*".
- [3] He seeks leave to appeal against the Judgment of Govind J delivered on 27th April 2007 on appeal from the appellant's conviction by the Learned Trial Magistrate at Lautoka Magistrate's Court on 12.3.07.
- [4] The appeal before His Lordship was on his conviction on the ground that it was wrong in law for the Learned Trial Magistrate to deal with drug cases. His Lordship said that "*this was totally misconceived as this offence took place before the commencement of the Illicit Drugs Act and the Learned Trial Magistrate was fully entitled to deal with it as was brought under the Dangerous Drug Act.*"
- [5] His Lordship varied the sentence of 7 years imprisonment by imposing a term of imprisonment for 3 years and 7 months in lieu to commence from the date of his original sentence i.e. 12.3.07.
- [6] The Appellant in this application told the Court that the sentence is harsh and excessive as wrong principles of sentencing have been applied AND that he should have been dealt with under the Illicit Drugs Control Act (Act No. 9 of 2004) and not under the Dangerous Drugs Act when under the Illicit Drugs Act by s39 "**the provisions of the Dangerous Drugs Act (Cap.114) which were substituted or replaced by the provisions of this Act**" were repealed at the time when he appeared in the Magistrate's Court on 12.3.07.
- [7] Under **section 3(4)** of the Court of Appeal (Amendment) Act (No. 13 of 1998) it is provided as follows:-

“3(4) Subject to subsection 121(2) of the Constitution appeals lie to the Court on a question of law only from final judgments of the High Court given in the exercise of the appellate jurisdiction of the High Court.” (emphasis mine)

- [8] The learned State Counsel concedes that question of law is involved hence she has no objection to leave being granted.
- [9] I am satisfied that a question of law has been raised against the Judgment of His Lordship and therefore under the said section 3(4) I **grant leave** to Appeal to Full Court. Further, I consider that the Appellant be granted Legal Aid so that his case can be presented properly when the Appeal is heard.



D. Pathik
D. Pathik

Judge of Appeal