

IN THE COURT OF APPEAL, FIJI
APPELATE JURISDICTION

CRIMINAL APPEAL NO. AAU 123 of 2014
(High Court HAC 179 of 2013)

BETWEEN : THE STATE

Appellant

AND : UMESH PRASAD

Respondent

Coram : Calanchini, P
Chandra, JA
Goundar, JA

Counsel : Ms. P Madanavosa for the Appellant
Ms. N Mishra for the Respondent

Date of Hearing : 2 July 2018

Date of Judgment : 7 March 2019

JUDGMENT

Calanchini, P

[1] I have read in draft the judgment of Chandra JA and agree with his reasoning and conclusion. The appeal should be struck out since it should have proceeded in the High Court.

Chandra, JA

- [2] The Respondent was initially charged with act with intent to cause Grievous Bodily Harm contrary to section 255 of the Crimes Act, 2009 and the matter was called in the High Court.
- [3] The High Court remitted the matter to the Nasinu Magistrate's Court on extended jurisdiction pursuant to section 4(2) of the Criminal Procedure Act, 2009.
- [4] When the matter was before the Magistrate's Court the charge was amended to a count of Assault Occasioning Bodily Harm contrary to section 275 of the Crimes Act, 2009.
- [5] A dispute had arisen between the Respondent and his wife when the wife had spilled water on him. He had reacted violently and assaulted her by kicking and punching her. He had also struck her several times with the blunt side of a cane knife.
- [6] In the Magistrate's Court, the Respondent pleaded guilty to the amended charge and was bound over for \$300.00 for 12 months to be of good behavior and fined \$150.00 in default 15 days imprisonment.
- [7] The State filed a timely petition of Appeal in the Court of Appeal appealing against the sentence on the ground that the sentence is manifestly lenient having regard to all the circumstances of the case.
- [8] The single Judge of the Court of Appeal ruled that the appeal involved a question of jurisdiction which was a question of law and stated that the question can be answered by the Full Court.

The Relevant Statutory Provisions

- [9] Section 4 of the Criminal Procedure Act, 2009 provides:

*“(1) Subject to the other provisions of the Act –
(a) Any indictable offence under the Crimes Act 2009 shall be tried by the High Court;*

(b) Any indictable offence triable summarily under the Crimes Act 2009 shall be tried by the High Court or a Magistrate Court, at the election of the accused; and
(c) Any summary offence shall be tried by the magistrates Court.

(2) Notwithstanding the provisions of sub-section (1), a judge of the High Court may, by order under his or her hand and seal of the High Court, in any particular case or class of cases, invest a magistrate with jurisdiction to try any offence which, in the absence of such order, would be beyond the magistrates' jurisdiction.

(3) A magistrate hearing a case in accordance with an Order made under sub-section (2) may not impose a sentence in excess of the sentencing powers of the magistrate as provided for under this Act."

[10] Section 246 of the Criminal Procedure act provides:

"Subject to any provisions of this Part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrate's Court in any criminal cause or trial to which he or she is a party may appeal to the High Court against the judgment, sentence or order of the Magistrates Court or both a judgment and sentence."

[11] The Appellate powers of the Court of Appeal are set out in Section 3(2) of the Court of Appeal Act provides:

"The Court shall have power and jurisdiction to hear and determine all appeals which lie to the Court by virtue of the Constitution, this Act or of any other law for the time being in force.

Section 21(2)(c) provides:

The State on a trial held before the High Court may appeal under this Part to the Court of Appeal-

(c) with the leave of the Court of Appeal against the sentence passed on the conviction of any person unless the sentence is one fixed by law."

[12] The Constitutional Provisions, S.99(3) and 100(5) sets out the powers of the Court of Appeal and the High Court. S.99(3) relates to the powers of the Court of Appeal regarding appeals from the High Court while S.100(5) relates to the powers of the High Court in relation to appeals from the Magistrate's Courts.

[13] Section 99(3) of the Constitution of 2013 provides:

“The Court of Appeal has jurisdiction, subject to this Constitution and to such requirements as prescribed by written law, to hear and determine appeals from all judgments of the High Court, and has such other jurisdiction as is conferred by written law.”

[14] Section 100(5) of the Constitution of 2013 provides:

“The High Court has jurisdiction, subject to conferral by written law of rights of appeal and to such requirements as may be prescribed by written law, to hear and determine appeals from all judgments of the Magistrates Court and other subordinate courts.”

Consideration of the Appeal

[15] The High Court, pursuant to section 4(2) of the Criminal Procedure Act, remitted the matter to the Magistrate’s Court thereby conferring on the Magistrate’s Court an extended jurisdiction to try an indictable offence which would otherwise have been tried by the High Court. The information filed initially was an indictable offence. If it was tried without any amendments in the Magistrate’s Court it had powers to give a sentence which was not in excess of the sentencing powers of the Magistrate. If it was necessary to impose a sentence higher than what a Magistrates Court would be empowered to impose, it could refer the case to the High Court for the imposition of the sentence pursuant to s. 190(1)(b) of the Criminal Procedure Act.

[16] When the matter was before the Magistrate’s Court, the charge was amended to a summary offence. The Respondent pleaded guilty, and in exercising the powers of the Magistrate’s Court, the Magistrate imposed a sentence on the Respondent which is now being canvassed by the Appellant.

[17] The Appellant has formulated the appeal in its petition without setting out any statutory provisions under which the appeal is being lodged. The appeal is addressed to the High Court but a perusal of the original record of the case revealed that the appeal was addressed to the Court of Appeal though in the body of the petition there is reference to

the High Court. It would seem that it is due to the fact that the appeal was addressed to the Court of Appeal, that the appeal was referred to the Court of Appeal and sent before a single judge of the Court of Appeal for granting leave.

- [18] The fact that it was addressed to the Court of Appeal and the fact that it was considered by a single Judge of the Court of Appeal for purposes of leave confirms that the appeal was to the Court of Appeal. The single Judge of the Court of Appeal has in his ruling stated that question of jurisdiction is a question of law and can be answered by the Full Court.
- [19] Counsel for the Appellant in his submissions cited section 3(2), 3(3) and 21(1) of the Court of Appeal Act which confer the appellate power to the Court of Appeal regarding decisions of the High Court. These provisions would be relevant if the appeal is from the decision of a High Court or from a Magistrate's Court exercising extended jurisdiction conferred on it by a High Court. However, section 3(3) is in respect of civil appeals and section 21(1) is in respect of appeals filed by a convicted person and therefore these sections are not relevant. An appeal against sentence imposed by the High Court, or a Magistrate's Court invested with extended jurisdiction can be filed in terms of section 21(2)(c) of the Court of Appeal Act .
- [20] Counsel for the Appellant has in his written submissions cited the decision in **Kirikiti v State** [2014] FJCA 223; AAU00055.2011 (7 April 2014) to the following effect:
- "Aggravated robbery is an indictable offence, but a judge of the High Court has power to extend the jurisdiction of the Magistrate's Court pursuant to section 4(2) of the Criminal Procedure Decree. When an accused is convicted in the Magistrate's Court exercising extended jurisdiction, the right of appeal lie under section 21(1) of the Court of Appeal Act."*
- [21] This decision relates to a situation where the Magistrate had exercised his authority under the extended jurisdiction. The accused had been charged for aggravated robbery which was an indictable offence which would not be ordinarily tried by a Magistrate's Court. The Magistrate tried him only on the basis of the investment of the extended jurisdiction in terms of section 4(2) of the Criminal Procedure Decree (now Act). The appeal was lodged by the accused in terms of section 21(1) of the Court of Appeal Act. Therefore

this decision is clearly distinguishable from the situation in the present case which is an appeal by the Respondent (State).

- [22] In the present case, initially the Magistrate's Court had extended jurisdiction as the information against the Respondent was in respect of an indictable offence. If it remained so, then the Magistrate's Court would have been exercising the authority invested on it by the High Court pursuant to section 4(2) of the Criminal Procedure Act. In such a situation, there would have been no doubt that any appeal against the decision of the Magistrate's Court exercising extended jurisdiction would have to be before the Court of Appeal in terms of section 21(2) of the Court of Appeal Act.
- [23] It is clear therefore that it is the offence for which an accused is charged with, is the determining factor regarding jurisdiction of the Court. If it is an indictable offence the jurisdiction lies with the High Court while in a summary offence the jurisdiction lies with the Magistrate's Court. The only exception being the investing of extended jurisdiction on the Magistrate's Court pursuant to section 4(2) of the Criminal Procedure Act in respect of an indictable offence.
- [24] It is the 'offence' for which an accused is charged with, which determines the jurisdiction of the Court. If it is an indictable offence the jurisdiction lies with the High Court (S.4 (1)(a) of the Criminal Procedure Act while in a summary offence the jurisdiction lies with the Magistrate's Court. (S.4 (1)(a) of Criminal Procedure Act. The only exception being the investing of extended jurisdiction on the Magistrate's Court pursuant to section 4(2) of the Criminal Procedure Act in respect of an indictable offence.
- [25] In the present case, the situation changed when the charge was amended to a lesser charge and it became a summary offence which was triable by a Magistrate's Court exercising its own jurisdiction.
- [26] Once the charge was amended to a summary charge, the jurisdiction of the Magistrate's Court changed. It ceased to have extended jurisdiction. A decision made by the Magistrate's Court exercising its own jurisdiction is appealable to the High Court in terms of section 246 of the Criminal Procedure Act.

[27] Therefore in the present case, the Court of Appeal lacks jurisdiction to entertain the appeal of the Appellant. Though the sentence imposed on the Respondent appeared lenient, this Court being devoid of jurisdiction is not in a position to entertain the appeal filed by the Appellant. The appeal of the Appellant should be struck out.

Goundar JA

[28] I agree with Chandra JA's conclusion that the Court of Appeal lacks jurisdiction to hear this appeal. I add my own reasons for that conclusion.

[29] On 30 April 2013, the respondent was charged with the offence of act with intent to cause grievous harm contrary to section 255(a) of the Crimes Act. On the same day, the respondent was produced in the Magistrates' Court at Nasinu and the case was transferred to the High Court, the offence of act with intent to cause grievous harm being an indictable offence. Section 4(1) of the Criminal Procedure Act gives the High Court jurisdiction to try indictable offences.

[30] At some stage after the respondent had made his appearance in the High Court and before an Information was filed, the High Court extended the jurisdiction of the Magistrates' Court to try this case pursuant to section 4(2) of the Criminal Procedure Act. Section 4(2) states:

Notwithstanding the provisions of sub-section (1), a judge of the High Court may, by order under his or her hand and the seal of the High Court, in any particular case or class of cases, invest a magistrate with jurisdiction to try any offence which, in the absence of such order, would be beyond the magistrate's jurisdiction.

[31] After the case was remitted to the Magistrates' Court for trial, on 22 November 2013, the prosecution amended the charge to a summary offence of assault causing actual bodily harm contrary to section 275 of the Crimes Act. The amended charge was filed in a form prescribed by section 56 of the Criminal Procedure Act. Section 56 prescribes for a form for charging an accused in the Magistrates' Court.

- [32] On February 2014, the respondent pleaded guilty to the summary offence and on 22 April 2014, he was fined \$150.00 and bound over in the sum of \$300.00 to keep peace and be of good behavior for 12 months.
- [33] The nature of offence was domestic violence. The victim was the respondent's spouse. According to the facts admitted by the respondent, the attack on the victim was ferocious resulting in physical injuries to her body. Apart from kicking and punching the victim, a cane knife was used to strike her several times.
- [34] Given the seriousness of the offending by the respondent, the Director of Public Prosecutions on 17 July 2014 filed an untimely appeal against the respondent's sentence in the High Court. However, the petition of appeal was administratively transferred to the Court of Appeal on the basis that the appeal was against a decision of the Magistrates' Court exercising an extended jurisdiction.
- [35] It is settled that the right of appeal against a decision of the Magistrates' Court made under an extended jurisdiction pursuant to section 4 (2) of the Criminal Procedure Act lies with the Court of Appeal pursuant to section 21 of the Court of Appeal Act (*Kirikiti v State* [2014] FJCA 223; AAU00055.2011 (7 April 2014), *Kumar v State* [2018] FJCA 148; AAU165.2017 (4 October 2018)). The question is whether the sentence in this case was pronounced in the exercise of an extended jurisdiction or a summary jurisdiction.
- [36] The offence of assault causing actual bodily harm is a summary offence. Section 4(1) (c) of the Criminal Procedure Act states that any summary offence shall be tried in a Magistrates' Court. When the charge was amended to a summary offence, it was reduced to writing in a form prescribed by the Criminal Procedure Act for filing of complaints in the Magistrates' Court. At this point the extended jurisdiction that was granted to the Magistrates' Court had ceased and the court acquired original jurisdiction to deal with the

summary offence contained in a charge sheet. The proceedings that followed after the amendment were in the exercise of the original summary jurisdiction of the Magistrates' Court. The sentence was pronounced in the exercise of the summary jurisdiction and not in the exercise of an extended jurisdiction.

- [37] Section 246 of the Criminal Procedure Act provides for a right of appeal to the High Court against the judgment, sentence or order of the Magistrates' Court or both a judgment and sentence. The Director of Public Prosecutions was correct to file his petition in the High Court. The High Court Criminal Registry erroneously referred that petition to the Court of Appeal. For these reasons, I would not dismiss the appeal for want of jurisdiction but refer the Director's appeal to be dealt by the High Court.


Order of Court:

The appeal of the Appellant is struck out.




Hon. Justice William Calanchini
PRESIDENT, COURT OF APPEAL


Hon. Justice Suresh Chandra
JUSTICE OF APPEAL


Hon. Justice Daniel Goundar
JUSTICE OF APPEAL