

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CIVIL JURISDICTION

Constitutional Redress  
Application No. HBM 33 of 2018

ASHWIN CHAND  
[APPLICANT]

V

FIJI POLICE FORCE  
[RESPONDENT]

Counsel : Applicant in Person  
: Mr. J. Mainavolau for the Respondent  
Date of Hearing & Ruling : 27<sup>th</sup> February, 2019  
Written Ruling on : 28<sup>th</sup> February, 2019

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**R U L I N G**  
**(On Preliminary Objection)**

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1. This is the written form of the ruling that I made on 27<sup>th</sup> February 2019 dismissing the Applicant's Constitutional Redress Application, after hearing the learned counsel for the Respondent and the Applicant on the preliminary objection taken up, on behalf of the Respondent, with regard to the maintainability of this Application.
2. The Applicant, **Ashwin Chand**, on 13<sup>th</sup> November 2018, filed this Application along with his covering letter dated 7<sup>th</sup> November 2018, for Constitutional Redress, pleading that he was not aware of the legal time frame to submit his

Application within 60 days and moved that same be heard on the discretion of this court disregarding the time frame.

3. The Applicant complains that on 11<sup>th</sup> August 2018, when he voluntarily approached the Police Officer, namely, Trevor (DC- 3780) at Namaka Police station with regard to an allegation of Arson and surrendered himself, the said Police officer violated his rights guaranteed under Article 13 of the constitution of Fiji, by detaining him for more than 72 hours, before his first appearance in the Nadi Magistrate's Court on 14<sup>th</sup> August 2018.
4. He alleges that the relevant officer, in his affidavit in support of State's objection for his bail application, on 29<sup>th</sup> October 2018, made false statements with regard to his arrest and due to this his rights both guaranteed under section 9 and the right to be bailed under section 13 (1) (h) of the Constitution were denied by the Court of Law.
5. Thus, he prays for a declaration that his rights under Article 13 of the 2013 Constitution of the Republic of Fiji was violated by detaining him for over 72 hours and for disciplinary action against the police officer concerned. Notably, the Applicant did not file any affidavit in support of his allegations.
6. When the matter came up yesterday, the learned counsel for the Respondent moved to raise preliminary objections and same being allowed, the learned counsel submitted that the Application is time barred and the Applicant has not exhausted alternative remedies available to him.
7. In response .the Applicant did not adduce any exceptional ground that warrant the consideration of this court to disregard the delay and permit the Applicant to proceed with his Application. Further, according to his submissions, it is apparent that criminal prosecution against him before the Magistrate is still pending. His Application is clearly out of time by little over one month.
8. As per his own averments, it also appears that his bail application before the learned Magistrate has been rejected and he has had and still has the liberty to bring his complain about the alleged extended detention to the attention of the learned Magistrate. If the rejection of bail was due to the alleged false contents in

the Police Officer's affidavit, he still has further remedy of appealing that order or making a fresh application for bail.

9. According to Section 44 (1) of the Constitution, a person could invoke the jurisdiction of the High Court only if he considers that:

Any of the rights that have been stipulated under the chapter of Bill of Rights of the Constitution had been contravened in relation to him, or is likely to be contravened in relation to him.

Order 3 rule 1 of the Constitutional Redress Rules states that an application under Section 44 (1) of the Constitution may be made by a motion supported by an affidavit. The motion must state the nature of the claim and the remedy or relief sought by the applicant. (Vide Order 4 rule 3 of the Constitutional Redress Rules).

Order 3 rule 2 of the Constitutional Redress Rules states that an application under Section 44 (1) of the Constitution must not be admitted or entertained by the court after 60 days from the date of the alleged violation first occurred, unless a judge satisfies that there are exceptional circumstances to hear the application outside of the period of 60 days. Order 3 rule 2 of the Constitutional Redress Rules states that:

*"An application under paragraph (1) must not be admitted or entertained after 60 days from the date when the matter at issue first arise unless a judge finds there are exceptional circumstances and that it is just to hear the application outside of that period."*

10. If there was any serious violation by the alleged delay in producing him in court, he could very well have brought it to the notice of the Magistrate, when he was produced on 14<sup>th</sup> August 2018. There is no allegation torture, assault or any inhuman treatment by the Police.

11. Article 13 (1) (f) of the Constitution states as follows:

3(1) every person who is arrested or detained has the right (f) "to be brought before a court as soon as reasonably possible, but in any case, not later than 48 hours after the time of the arrest or if that is not reasonably possible, as soon as possible thereafter." (Emphasis mine)

12. In similar cases, submissions have been made before this court relying on the above exception that unless it is an urgent, special or high priority case there is no arrangement to produce a suspect before the Magistrate out of the office hours, weekends and Holidays.
13. In this case the date on which the Applicant surrendered or arrested was, admittedly, 11<sup>th</sup> of August 2018, which happens to be a Saturday. The next day being the Sunday, the earliest possible date for production before the Magistrate was either Monday 13<sup>th</sup> or Tuesday 14<sup>th</sup> August 2018. The Applicant says that he went to Police Station and surrendered on 11<sup>th</sup> August 2018. The date and time of surrendering need not necessarily be the time or the date of arrest. The police could have arrested him 48 hours prior to his production before the Magistrate on 14<sup>th</sup> August 2018.
14. It is well recognized that while an accused has a right to seek redress for alleged breaches of his or her constitutional rights in criminal proceedings, an application for constitutional redress is not a suitable vehicle for the resolution of disputed questions of fact ahead of a criminal trial (*Abhay Kumar Singh v The Director of Public Prosecutions & The Attorney General unreported Cr App No AAU0037 of 2003S; 16 July 2004*). In Singh's case, the Court of Appeal agreed with the High Court that an application for constitutional redress on questions of disputed facts ahead of a scheduled criminal trial will fragment the criminal process and will delay it. Later cases on constitutional redress followed *Singh (Nata Civil Action No HBM 35 of 2005, 4 May 2006; Ligavai v DPP HBM No 28 of 2014, 28 April 2015; Silatolu v State Misc. Case No HAM163 of 2014, 23 June 2015)*.
15. In the criminal case of *State v Lal & Ors unreported Case No HAR001 of 2015; 2 June 2015*, Madigan J said at [10]:

*"...where reliance is placed on the breach of a constitutional right precedence must be given to whatever "parallel and collateral remedies" are available with respect to the same matter."*
16. The redress that the Applicant herein seeks is on the allegation not supported by his affidavit evidence. No oral evidence is led in this type of Applications. Any decision granted by this Court totally relying on the mere averments not

supported by affidavit evidence, would, probably, threaten the proceedings before the Magistrate Court.

17. When a person is investigated for a crime or charged with an offence, moves for Constitutional redress, the Court has to be extra vigilant as a declaration of this nature or anything similar to it by the High Court could, probably, defeat or sabotage the criminal proceedings against the Applicant before the Magistrate Court or at a higher forum.
18. The Application has been made after 60 days of prescribed period and the applicant has not satisfied me that there are exceptional circumstances to disregard his delay. Further, adequate alternative remedies are available to the Applicant in respect of his prayers in the Application.
19. In view of the above findings and for the other reasons stated above, considered without prejudice to the above findings, I uphold the preliminary objection raised by the learned Respondent's Counsel and decide that the Application for Constitutional Redress is frivolous and should necessarily fail.
20. Accordingly, the Application for Constitutional Redress is hereby dismissed.
21. A copy of this ruling shall be served on the Applicant through the officer in charge of the Lautoka Remand Centre.



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A.M.Mohammed Mackie

Judge

**At Lautoka**

**28<sup>th</sup> February, 2018**