IN THE HIGH COURT OF FIJI
AT SUVA
ANTI CORRUPTION DIVISION

APPEAL CASE NO. HACDA 006 OF 2021

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

vs

BOBBY JITENDRA MAHARAJ

Counsels:	**Ms. Fatafehi S**	**-**	**Appellant**
	Mr. Sharma D	**-**	**Respondent**

JUDGEMENT

1. In this matter the Respondent, **Bobby Jitendra Maharaj,** was charged in the Magistrates Court of Suva on the 12th of October 2016, as follows:

CHARGE

Statement of Offence

ABUSE OF OFFICE Contrary to Section 139 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

BOBBY MAHARAJ between 17 March 2012 to 31st December 2012 whilst being employed in the public service as the Chief Executive Officer of the Fiji Commerce Commission, did an arbitrary act in abuse of the authority of his office, by directing one Sanjay Menon, an employee of the Fiji Commerce Commission, without conducting an inspection, to fill in false information in the Fiji Commerce Commission Inspection Form No. 10A to indicate that an inspection was conducted at Rajah's Food Court and Bakery in Korovou on 19 December 2011 and, a verbal warning was issued against the said Rajah's Food Court and Bakery for breaches under the Commerce Commission Decree which was an act prejudicial to the rights of the Fiji Commerce Commission and Rajah's Food Court and Bakery.

2. At trial in the Magistrate's Court of Suva, Prosecution had led 6 witnesses to establish its case against the Accused (Respondent in this matter). In this regard, as **PW1** a business partner of the subject Food Court and Bakery had given evidence and as **PW2** the officer from the Fiji Commerce Commission who was directed by the Accused (Respondent) to fill a 10A inspection form had given evidence and marked a copy of the inspection form 10A he filled as **PE17**. At the conclusion of the Prosecution case, Defense had made an application of 'no case to answer' under **Section 178** of the **Criminal Procedure Act of 2009** before the Learned Magistrate. In considering the evidence led in the Magistrate's Court the Learned Magistrate had accepted this application of the Defense and acquitted the Accused (Respondent) on 11th of May 2020.

3. In reaching the determination of 'no case to answer' in this matter, the Learned Resident Magistrate had relied on two factors predominantly and found that **PE17** was an unreliable piece of evidence by being an invalid document. The two factors relied heavily by the Learned Magistrate are as follows:

   i) The Inspection Report dated 19 December 2011 submitted by the Prosecution **(PE17)** was unreliable by being a mere copy of the original.

   ii) **PE17** has no legal effect because of the absence of the Commerce Commission stamp and serial number.

4. In this regard, the Learned Magistrate had highlighted the relevance of **PE17** from para 17 to para 30 of his ruling and commented on the possibility of accepting a copy of an original document in evidence and found that **PE17** was unreliable. Further, in paras 39, 41, 46 and 50 of his ruling the Learned Magistrate has emphasised that there was no legal effect of **PE17** due to the absence of the Commerce Commission stamp and the serial number in **PE17**. As per this analysis, the Learned Resident Magistrate had been of the view that the Prosecution evidence was manifestly unreliable and held that the Accused had no case to answer.

5. Being dissatisfied with the acquittal of the Accused (Respondent) by the Learned Resident Magistrate of Suva, the Appellant (FICAC) had filed a timely appeal to the High Court against the said acquittal on the premise of 'no case to answer' at the Magistrate's Court case.

6. In this appeal in this Court, both counsel for the Appellant and the Respondent made their submissions in this Court and have filed their written responses. On careful consideration of these submissions, now this Court will proceed to deliver its determination, as below:

Grounds of Appeal

7. The Appellant has filed this application on the following grounds of appeal:

   Ground 1: The learned Magistrate erred in fact and law by failing to analyze the evidence objectively in its entirety.

   Ground 2: The Learned Magistrate erred in fact and law and misconceived when he decided that the exhibit No. PE17 had been discredited and unreliable to have any probative value.

   Ground 3: The Learned Magistrate erred in fact and law when he applied his misconceived analysis of the evidence of PE17 to the elements of the offence and failed to analyze the elements of the offence properly.

   Ground 4: The Learned Magistrate erred in fact and law by giving undue weight to the good character evidence at the No Case to Answer stage of the hearing.

8. Further, as the final prayer, the Appellant's prayer is as below:

   > *"that this Honorable Court set aside the No Case to Answer Ruling and order that there be a re-trial or alternatively find that there is a case to answer."*

9. In considering these grounds of appeal and the final prayer, this Court perceives that what is expected of this Court by the Appellant by this application is to determine whether the Learned Magistrate had correctly reached the "No Case to Answer" verdict in this matter considering the evidence led by the Prosecution at the Magistrates Court trial.

Law in relation to "no case to answer" in the Magistrate's Court

10. As tendered by the Prosecution, the law in relation to this issue of 'no case to answer' in the Magistrate's Court is well settled in Fiji by the decision in **Sahib v State [2005]**[1] by **Madam Justice Nazhat Shamem**, where she has stated, as below:

    > *"In the Magistrates' Courts, both tests apply. So the magistrate must ask himself or herself firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether on the prosecution case, taken at its highest, a reasonable tribunal could convict. In considering the prosecution case at*

[1] [2005] FJHC 95

its highest, there can be no doubt at all that where the evidence is entirely discredited, from no matter which angle one looks at it, a court can uphold a submission of no case. However, where a possible view of the evidence might lead the court to convict, the case should proceed to the defense case."

11. Considering the ruling of the Learned Resident Magistrate in this matter and the emphasis he had given to the unreliability of **PE17** in reaching his final determination of 'no case to answer', this Court perceives that the **practice note**[2] issued by the **Queen's Bench Division** of the **High Court of Justice** of **England and Wales**, where the current position in Fiji follows the same trajectory, provides the needed guidance in determining the justification or the absence of justification of the determination of the Learned Resident Magistrate. In this regard, **Lord Parker CJ** has stated, as below:

> *"Those of us who sit in the Divisional Court have the distinct impression that justices today are being persuaded all too often to uphold a submission of no case. In the result, this court has had on many occasions to send the case back to the justices for the hearing to be continued with inevitable delay and increased expenditure. Without attempting to lay down any principle of law, we think that as a matter of practice justices should be guided by the following considerations.*
>
> *A submission that there is no case to answer may properly be made and upheld:*
>
> *(a) when there has been no evidence to prove an essential element in the alleged offence:*
>
> *(b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.*
>
> *Apart from these two situations a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudication tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer."*

[2] [1962] All ER 448

12. In analysing the ruling in issue of the Learned Magistrate in line with the above highlighted **Queen's Bench Division** direction as to when an adjudicator could reach a 'no case to answer verdict, it appears that in this matter the Learned Resident Magistrate had reached his conclusion on the premise that, '*the evidence adduced by the prosecution by **PE17** has been discredited as a result of being manifestly unreliable that no reasonable tribunal could safely convict on it".*

Finding of the Court

13. At the very outset, this Court wishes to highlight that the Accused had been charged in the Magistrate Court in this matter for doing an arbitrary act in abuse of authority of his office by directing one **Sanjay Menon**, an employee of the Fiji Commerce Commission, to fill a Fiji Commerce Commission Inspection form 10A with false information to indicate that an inspection was conducted at Rajah's Food Court and Bakery in Korovou on 19/12/2011, where an inspection was actually not conducted by the Commission.

14. As detailed earlier, in relation to this charge, Prosecution had led the evidence of a business partner of Rajah's Food Court who had given evidence as **PW1** and testified that no inspection was conducted by the Fiji Commerce Commission on his business premises on 19th December 2011. Further, the person to whom the Accused gave the alleged arbitrary direction in issue **(Sanjay Menon)** has given evidence for the Prosecution as **PW2** and confirmed the said direction of the Accused and testified that he acted on that direction of the Accused to fill the 10A form. The document marked **PE17** had only been a supporting document in relation to the action taken by **PW2** on the directions of the Accused.

15. Unfortunately, in reaching the decision of no case to answer in this matter in favour of the Accused, the Learned Magistrate had not commented and sufficiently discredited the evidence given in Court by the Prosecution witnesses and simply relied on **PE17**, which was only a supporting document to corroborate the evidence of **PW2** and the action taken by him in furtherance of the arbitrary instructions of the Accused. Even in the minute analysis the Learned Magistrate did on the evidence of Prosecution witnesses, he had scrutinised their knowledge regarding **PE17**. In this regard, this Court finds that the Learned Resident Magistrate had failed to analyse and determine the salient evidence in the Magistrate's Court trial and had been misled and focused his attention entirely on the document marked **PE17** to reach his verdict**.** Even in relation to **PE17**, this Court finds the determination of the Learned Magistrate was remarkably erroneous.

16. For this end, in relation to **PEX17** being a copy of the original form 10A and the reluctance expressed by the Learned Magistrate to accept **PE17** in

evidence, this Court wishes to emphasise the applicable law in common law jurisdictions like ours in relation to acceptance of copies of original documents. The acceptance of copy records in evidence is highlighted in **ARCHBOLD [2022]**[3], as follows:

> *"As a general rule it is unnecessary to produce in evidence the original of any public document. The common law and various statutes and rules of court make comprehensive provision for the use of copies. In addition, s.14 of the Evidence Act 185(s9-24) contains a general permission as to the use of copies where there is no specific permission……....."*

17. In the case of **Director of Public Prosecutions v Sugden [2018]**[4] the **Queen's Bench Division** of the **High Court of Justice of England and Wales** has elaborated the value of copy records, as below:

> *"The combined effect of the common law and the CJA 2003 s 139(1) was that, first, a document containing a record of relevant factual evidence was generally admissible in the ordinary way, because the content of the document was relevant to an issue in the case.*
>
> *Second, if the document was a copy or other form of secondary evidence, it was not thereby made inadmissible. However, the absence of the original called for an explanation if one was sought by the opposing party.*
>
> *Third, if the original was not produced, the court might, not must, refuse to admit in evidence a copy or other secondary evidence and would consider the likely accuracy or otherwise of the copy or other secondary evidence.*
>
> *Fourth, in criminal proceedings, the court would also consider any explanation for its absence, its probative value and any prejudicial effect on the defence.*
>
> *Fifth, where there was no reason to doubt that the document was a true copy of the original and its content was within the knowledge of the defendant so that its accuracy could be challenged in cross-examination, there would generally be no prejudice to the defence in admitting the copy document in evidence……."*

[3] SWEET & MAXWELL [2022], 1666
[4] [2018] All ER (D) 139 (MAR)

18. Further, in this matter, **PW2** had prepared the 10A form in issue and in giving evidence he had accepted **PE17** to be a copy of the original document prepared by him on the instructions of the Accused, though some parts had been subsequently filled with the signature of the Accused. In addition, Prosecution had provided some explanation for the absence of the original 10A form. Therefore, this Court sees no reason why a copy of the original 10A form could not be accepted in evidence at the Magistrates' Court trial.

19. In relation to the analysis of the Learned Magistrate of the absence of the Commission stamp and the serial number in **PE17** and thus finding that **PE17** not having any legal effect, this Court wishes to stress that this Magistrate Court trial had not been on the accuracy or the legitimacy of **PE17**. The trial had been on the arbitrary action of the Accused to which several witnesses had given evidence. **PE17** had only been a supporting document and the legitimacy of this document has no determining effect over the cogent testimonies of the Prosecution witnesses at trial.

Conclusion and Orders

20. On the above analysis, this Court finds that the Learned Magistrate had erred in law in pronouncing a 'no case to answer' ruling in favour of the Accused in this matter. Therefore, acting under **Section 256 (2) (a)** of the **Criminal Procedure Act 2009**, this Court set aside the 'no case to answer' ruling made by the Learned Magistrate in this matter and direct the Learned Magistrate to call for the Defence of the Accused and make a final determination on the charge filed in Magistrates Court, accordingly.

21. You have thirty (30) days to appeal to the Court of Appeal of Fiji.

ANTI CORRUPTION DIVISION * SUVA * HIGH COURT OF FIJI

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Hon. Justice Dr. Thushara Kumarage

At Suva
this 28th April 2023

cc: 1. Fiji Independent Commission Against Corruption
2. R. Patel Lawyers