IN THE SUPREME COURT OF FIJI

Revisional Jurisdiction No. 14 of 1958

SUVA CITY COUNCIL

v.

RAM LAL, f/n ARDIN

Destitute person charged with and convicted of an offence contrary to section 110 of the Public Health Ordinance. Magistrates' court informed of poor circumstances of accused and his family. Knowledge of inability to pay fine. Principle to be followed. Section 38 Penal Code applied.

Held.—(1) (Citing with approval *dicta* in *R. v. Mureto Munyoki*, 20 K.L.R. 64).

"It is a first principle in inflicting fines that the capacity of the accused to pay should be considered."

(2) There are exceptions to those cases in which the principle should be applied.

(3) Extenuating circumstances in such cases need not necessarily be circumstances connected with the facts of the case itself.

(4) A standard fine should not be pre-determined for any particular offence.

(5) Magistrates should refer cases to the Supreme Court for review in certain exceptional circumstances.

LOWE, C.J. [26th June, 1958]—

This case has come to my notice after an unfortunate history of events. The accused was charged with being the owner or occupier of premises in or about which there was a collection of water found to contain immature stages of mosquito larvae, contrary to section 110 of the Public Health Ordinance, Cap. 107. He pleaded guilty but made no statement in mitigation.

The learned Senior Magistrate imposed a fine of £1 0s. 0d. with costs fixed at 12s. 6d. The conviction and fine were entered on 13th January, 1958.

Whether or not he had overlooked the fact is not clear but the Magistrate had been addressed in writing on the 16th December, 1957, on behalf of the J. P. Bayly Clinic and, in the letter under reference, he had been told that the accused was well known to the Social Department of the Clinic; that he was unfit for any work; that he had a wife and three children and that the whole income of the family was £3 0s. 0d. per month, or approximately 4·75d. per person per day. The letter stated that all members of the family were anaemic and undernourished and that they received a destitute allowance.

The letter reasonably asked whether any fine imposed could be spread over a few years to give the accused a chance to pay. If this was not possible it was stated that the Social Department of the Clinic would pay the fine.

Correspondence which is within the record and which I have perused, indicates that there was no answer, to that letter, sent to the Bayly Clinic but the day after the fine was imposed the Clinic wrote again, enclosing a cheque for payment of the fine and costs and reiterating that the accused and his family were destitutes. This second letter again asked that a long time be allowed to pay in view of the very poor circumstances of the accused and, in fact, suggested that the fine in the circumstances was excessive.

The learned Magistrate on the 14th January replied to the Clinic acknowledging receipt of the fine and costs and stating: " I appreciate that to a person living on 4·8d. per day, this may seem a heavy fine but I cannot regulate the fine according to the incomes of the persons fined." He went on to the effect that there was a judgment in the Divisional Court of England which specifically ruled against that method of fining. I have not been able to find that judgment. There is, in fact, specific legislation in England, by section 31 of the Magistrates' Courts Act 1952, as follows:

> " (1) In fixing the amount of a fine, a magistrates' court shall take into consideration among other things the means of the person on whom the fine is imposed so far as they appear or are known to the court."

The Magistrate went on: " Anybody who has committed that offence with no extenuating circumstance affecting the offence will be fined £1 0s. 0d." and he said that the law did not allow the court to permit more than 30 days within which to pay the fine. It is not advisable to fix any standard fine for an offence as the circumstances of each cases are invariably different.

It is correct that 30 days is the limit of the time allowed by law, in which to pay any fine imposed by a Magistrate but I cannot agree to the adoption by Magistrates of the principle that a fine should not be related to the ability of an accused to pay. I am supported in my view that the opposite principle must be applied, within reason, by *dicta* in *Rex v. Mureto Munyoki*, 20 Kenya Law Reports, 64. It was stated in that case that—

> " it is a first principle in inflicting fines that the capacity of the accused to pay should be considered."

That principle has long been established and I am satisfied that it is the right principle and is one which must always be kept in view. However, where an offender is shown to have a long list of previous convictions or other aggravating circumstances appear, the principle should be abandoned and the offender should then be given punishment which will deter him and other potential offenders and will be adequate to give to members of the public the protection to which they are entitled.

Regrettably, after the learned Magistrate had replied to the Clinic's second letter, the matter seems to have been in unfortunate transit. Presumably, the Clinic wrote to the Administration and an inquiry was then made as to the principle stated by the learned Magistrate. Many people seem to have handled the record but, unfortunately it was not reported to this Court for revision. When matters reach such a stage it is proper for Magistrates to forward the record and the relevant documents to this Court which will then consider on a revision of the case whether or not the conviction should stand or the sentence should be varied. There need be no application for revision, either by the Magistrate or by any party to the proceedings. Had such action been taken in the instant case, much time and effort would have been saved.

There are very clear extenuating circumstances which should have been taken into consideration in favour of the accused. Such extenuating circumstances need not necessarily be circumstances connected with the facts of the case itself. There is no analogy between the provisions of section 38 of the Penal Code and those sections of the Traffic Ordinance which deal with special circumstances, in which latter case they must be special to the circumstances of the case.

The unfortunate accused was clearly not in a position to pay any fine. The offence was trivial, although it must not be taken that I suggest that the Health Department was wrong in laying an information in view of the annoying prevalence of mosquitoes in this Colony. In all the circumstances, I am satisfied that this was a case in which the Magistrate would have been entitled to exercise his discretion under section 38 and that, without proceeding to conviction, he could have made an order dismissing the charge. In the circumstances I quash the conviction and set aside the fine and the order as to costs. The sum already paid is to be refunded to the Bayly Clinic. I dismiss the charge under the provisions of section 38 of the Penal Code.

I should add that the relevant portion of this Order must not be taken in any way as being intended to fetter the discretion of any Magistrate in dealing with the many letters he must receive complaining about fines or other matters. It is intended merely to suggest that when cases reach the stage which had been reached in the instant case, it should be an invariable practice to forward the record to this Court for review.