

**PREM SINGH**

v.

**THE STATE**

[HIGH COURT, 1994 (Pain J), 26 October]

Appellate Jurisdiction

*Crime-procedure-equivocal plea-what constitutes-Criminal Procedure Code (Cap 21) Section 309(1).*

*Crime-traffic offences-special reasons for not disqualifying-motor vehicle dealers-general licence conditions-Traffic Regulations (Cap 176) rr 13, 15.*

On appeal against sentence passed in the Magistrates Court the High Court HELD: (i) there was nothing to show that the plea entered in the lower court was equivocal; and (ii) that the court had no duty to warn of possible disqualification.

Cases cited:

*R v Indar Naicker* 24 FLR 80

*R v Rochdale Justices ex parte Allwork* (1981) 73 Cr. App. R. 319

Appeal against sentence imposed in the Magistrates Court.

*S. Chandra* for Appellant

*S. Kaimacuata* for Respondent

**Pain J:**

The Appellant faced two charges in the Magistrates Court. They were a charge of permitting another person to drive an unlicensed motor vehicle and a charge of permitting another person to drive a motor vehicle in contravention of third party risks. He pleaded guilty to those charges. He was convicted and sentenced by the Learned Magistrate. He now appeals on four grounds being the original ground contained in the petition of appeal and three additional grounds contained in his notice of motion for leave to add additional grounds dated the 16th of September 1994, which application was granted by me.

The Appellant also seeks leave to adduce evidence at this hearing. As the appeal raises the question of equivocality of the plea of guilty in the Magistrates Court, it is appropriate for this Court to receive some evidence on the matter from the Appellant. Authority for this can be found in the case of the *R v Rochdale Justices ex parte Allwork* (1981) 73 Cr. App. Reports page 319. Accordingly that application to adduce evidence is granted. Counsel for the Appellant advised the court that the Affidavit of the Appellant is sufficient.

Accordingly I have carefully considered the contents of that Affidavit and taken it into account when considering the appeal.

There are four grounds. The first is contained in the petition of appeal. The ground stated there was that the sentence imposed by the learned trial Magistrate was harsh, excessive and unreasonable having regard to the circumstances surrounding the case. This has not been argued as a separate ground at this hearing. To some extent it is reflected in the other grounds advanced. On its own and in comparison with penalties imposed on others for these offences and in particular with the penalties imposed on the driver of the vehicle in this case the penalties imposed on this Appellant were not manifestly excessive.

The second ground of appeal is that the plea tendered by the Appellant in the Magistrates Court was equivocal. It is submitted that the case ought to be remitted back to the Magistrates Court to be re-heard and for the Defendant to enter a plea of not guilty. For a plea of guilty to be equivocal, it must be made in circumstances that show it is not a complete admission of guilt to the charge. The Court is concerned with what occurred at the hearing before the Magistrate. Something must have occurred to indicate that there was something doubtful or ambiguous in the plea given. It was expressed in the following words at page 323 of the decision in Allwork that I have earlier mentioned:

“It is a plea which must be equivocal. In other words the equivocality must be shown by what went on before the Magistrates Court. As Lord Parker CJ. pointed in the Marylebone Justices case (supra). The fact that the Defendant has subsequently thought better of the plea or has in some ways changed his mind is not sufficient on its own. It must be apparent to the Justices that the Defendant is saying, “I am guilty but”: for instance “I plead guilty to stealing but I thought the article was mine,” that type of situation. If there is no such evidence, then that is the end of the matter. The issue of equivocality has gone and the Crown Court will proceed to deal with the appeal against the sentence.”

The Appellant originally pleaded not guilty to the charges but later changed his plea to guilty. He says that this was done on the advice of his counsel. He did not expect to receive a disqualification from driving and his counsel did not advise him of this. He also says that he has a defence to the charges.

The record in the Magistrates Court shows that at the hearing on the 24th February 1994 the accused was represented by counsel. The charges were read and explained to him. He pleaded to both charges. The facts were outlined. He admitted those facts. He admitted a previous conviction. Counsel made submissions on his behalf. The Magistrate then proceeded to impose sentence. This record shows a completely regular hearing with the Magistrate

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A adopting correct procedures to ensure that the Appellant was fully aware of the nature of the charges and agreed with the facts presented. Neither the Appellant nor his counsel took exception to any matter raised at the hearing. There was nothing whatever that the Appellant or his counsel said or did at the hearing to raise the slightest suspicion that there was any qualification to his pleas of guilty. The Magistrate therefore rightly proceeded to sentence him as required by law. The plea in these circumstances cannot be regarded in any way as equivocal.

B The authorities make it quite clear that in these circumstances an appellate court should not proceed further into the matter and can only consider an appeal against the sentence. Section 309 (1) of the Criminal Procedure Code applies and this court can only consider an appeal as to the extent or legality of the sentence.

C The third ground raised was that the Learned Magistrate failed to warn the Appellant of the mandatory disqualification or ask if any special reason existed for not disqualifying him.

D This legislation with mandatory disqualification has been in force in Fiji for many years. Nothing in the section creating the offence and penalty imposes any duty on the Magistrate to enquire from a Defendant whether there are special reasons. Nor was anything raised at the hearing to indicate that there might be. The Appellant was represented by counsel. I agree with the comments made in the case of R v Indar Naicker 24 FLR 80 cited by Counsel for the Respondent. It is for the Defendant to raise special reasons. In this case there was nothing to require the Magistrate to raise the matter or give an explanation to the Appellant.

E The fourth ground of appeal is on the basis that the Magistrate failed to exercise his discretion under Section 29 (1) of the Traffic Act to limit the disqualification to the same class or description of vehicle in relation to which the offence was committed. This ground had not been specifically argued. However, on my reading of Section 29 of the Traffic Act, it appears to be limited to disqualifications for offences against specific sections of the Traffic Act and would not apply to disqualification for an offence under Section 4 of the Motor Vehicles Third Party Insurance Act. This matter has, however, not been argued and I make no final determination on it. The reason is that, in any event, as with the argument as to special reasons, there was nothing in the circumstances of this case to require the Magistrate to direct the attention of the Appellant or his counsel to this discretion.

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G For these reasons the grounds advanced on behalf of the Appellant cannot be sustained. The Appellant may feel aggrieved that opportunity is denied to him to raise the defence that he now advances. For this reason I will say something about that defence. There is no requirement for me to do so but I consider it

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appropriate in the particular circumstances. To me, the defence does appear to be unfounded.

It was submitted that a defence was available to the Appellant as there was an insurance cover for the vehicle. It is said that at the time of the accident the vehicle was being used under a dealer's licence of Prakash Motors for which licence plate number TP488 had been issued. Prakash Motors had a Third Party Insurance Policy for vehicles from time to time being used under that dealer's licence.

A number of facts emerged at the hearing before me. In particular the vehicle concerned was a commercial vehicle purchased by the Appellant's employer, Kooline Refrigeration Ltd. some time previously. Some money may still have been owing on the motor vehicle. However it had been registered in the name of Kooline Refrigeration Ltd. for at least the period from the 4th November 1991 until the 4th November 1992. The motor vehicle licence expired on that latter date. This incident occurred on the 25th November 1992 when the vehicle remained unlicensed. The licence was renewed a few days later.

The Appellant asserts that the vehicle was being used under the cover of Prakash Motors dealer's licence on that day because it was to be serviced by Prakash Motors. It was also suggested that the vehicle was being driven to the Licensing Authority for registration purposes.

I have some difficulty in accepting the credibility of this explanation but I qualify that by saying that I have only heard submissions and no oral evidence that would be subject to cross examination. However, if the explanation is accepted in its entirety, I do not see that a defence would be available because this vehicle could not have been covered by those particular dealers plates.

The Traffic Act provides for registration and licensing of vehicles. Section 15 provides for registration. Upon registration of a vehicle number plates are obtained. The vehicle is registered in the name of the owner. Section 11 then provides for the issue of a motor vehicle licence. That licence is issued for the particular vehicle. Special provisions are contained in Section 20 for motor vehicle dealers who are likely to have a whole yard full of vehicles. Instead of taking a separate licence for each vehicle, a dealer in motor vehicles may be issued with one or more general licences "in respect of all vehicles kept by him". Such general licence (with the appropriate special plates) can only be used on one vehicle at a time. Regulation 15 of the Traffic Regulations deals further with such dealers licences. The Regulation provides that a general dealers licence is issued subject to conditions which include a condition that no person shall use the vehicle other than (i) the dealer or his employee, (ii) a bona fide prospective purchaser provided he is accompanied by the dealer or his employee or (iii) an authorised examiner of motor vehicles. Accordingly it would appear that the dealer's licence of Prakash Motors could not be valid

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A and legal for this particular vehicle registered in the name of Kooline Refrigeration. This would be, first, because it was not a vehicle kept by the dealer as specified in the act. It was a vehicle registered in the name of Kooline Refrigeration and used by that company for their own work purposes. Secondly, the vehicle at the time was not being driven by an authorised person as prescribed within Regulation 15. The vehicle was being driven by an employee of Kooline Refrigeration who was on his own in the vehicle. That shows a clear breach of

B the condition in Regulation 15. On this basis neither Kooline Refrigeration Ltd. the driver or this Appellant could claim protection under the dealers licence.

I repeat that this excursion into the merits of the defence is not necessary for the purposes of this appeal. I have made these observations because they may be of some help to the Appellant in reconciling himself to the position that he now faces.

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For the reasons given the appeal cannot succeed. Accordingly the appeal is dismissed.

*(Appeal dismissed.)*

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