

**IN THE MAGISTRATE'S COURT AT LABASA**

**CRIMINAL JURISDICTION**

*Criminal Case No. 211 of 2017*

**STATE**

v

**HARI DUTT SHARMA**

Appearance : **WSGT Lani** for the prosecution  
**Mr Dayal. R** for the accused

Ruling : **17 July 2020**

**RULING**

**NO CASE TO ANSWER**

1. The accused, Hari Dutt Sharma is charge for *Giving False Information to a Public Officer* under section 201 of the *Crimes Act*.
2. The particulars of the offence are that, the accused on the 7<sup>th</sup> day of May 2017, at Labasa, in the Northern Division, gave false information to a police officer Sgt Vidya Pillay that he was driving the vehicle registration number ER 290 which he knows to be false.

3. The accused pleaded not guilty to the charge on 29 2017.
4. The case proceeded to trial on 1 June 2020.
5. The Prosecutor called two witnesses and closed the prosecution case. The defence make an application for no case to answer and seek time to file submission. The submission was filed on 5 June 2020.

#### **Application**

6. The defence submitted that there is no evidence to prove that the accused committed the offence. The evidence of the prosecution witnesses is discredited and unreliable. All the elements of the offence were not proven by the prosecution.

#### **Law**

7. *Section 178 of the Criminal Procedure Act* provides for such application to be made.
8. *Section 201 of the Crimes Act, state;-*  
    *"If a person (the first person) gives to any person employed in the public service any information which he or she knows or believes to be false, and intending to cause, or knowing it to be likely that the first person will cause the person employed in the public service-*
  - (a) to do or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or*
  - (b) to use the lawful power of such person employed in the public to the injury or annoyance of any person-*

*the first person commits a summary offence.*

9. The elements of the offence are;-
  - (a) the accused,*
  - (b) gives false information,*
  - (c) to a person employed in the public service,*
  - (d) with intent to cause the officer to act on the false information.*
  
10. The test for no case to answer in the Magistrate Court was stated in ***Shabib v The State*** [2005] FJHC 95; HAA0022J.2005S (28 April 2005) as :-
  - a. Whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence.*
  - b. Whether on the prosecution case, taken at its highest, a reasonable tribunal could convict.*
  
11. The burden of proof is on the prosecution to establish the above test.

**Analysis and determination**

12. The accused was identified in court by the prosecution witnesses.
  
13. Inspector Vidya (Vidya) is the first witness for the prosecution. He stated that on 7 May 2017, he was on vehicle patrol with PC Waisele when they arrested Elvin Singh from vehicle ER 290 at Grand Eastern hotel for drunk and drive.
  
14. Vidya stated that while they were at the police station with Elvin Singh, the accused came and informed them that he was driving the vehicle ER 290 on that night and Elvin Singh was not driving the said vehicle.

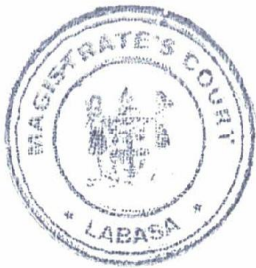
15. Vidya stated that he saw Elvin Singh was driving the vehicle ER 290 along Gibson Street. They suspect Elvin Singh was drunk when driving so they followed the vehicle ER 290 towards Grand Eastern hotel. He said that they parked at the back of the vehicle ER 290 when the said vehicle stop at Grand Eastern hotel. They saw the accused came out of the vehicle ER 290 from the front passenger seat. He told PC Waisele to go and check the driver of ER 290.
16. CPL 4408 Waisale (Waisale) is the second witness for the prosecution case. He confirmed that he was with Vidya on 7 May 2017. At Gibson Street, they followed vehicle ER 290 to the Grand Eastern hotel. He went to the vehicle ER 290, he saw Elvin Singh was sitting on the driver's seat with ignition on. He said Elvin Singh was heavily smelt of liquor. He said, that Elvin Singh was driving the vehicle ER 290 as he was sitting on the driver's seat. They arrested Elvin Singh and took him to the police station.
17. Vidya and Waisale said that the accused was giving them false information as they saw him coming out of the front passenger seat.
18. Though there were some inconsistency on the evidence of prosecution when Vidya said that he stop the vehicle ER 290 at Gibson Street and he was talking to Elvin Singh. Waisele said that they did not stop the vehicle at Gibson Street and the vehicle ER 290 did not stop at Gibson Street. This inconsistency are immaterial as it did not touch on any elements of the offence. That may affect the credibility of Vidya. However, the material

evidence that they saw the accused came out on the passenger seat was consistent.

19. In assessing the evidence adduced I find that there are relevant and admissible evidence adduced by the prosecution that implicates that accused on all the elements of the offence.

20. I find that there are sufficient evidence that requires the accused to put his defence. The application is dismissed. I ruled that the accused has a case to answer

**28 days to appeal**



A handwritten signature in blue ink, appearing to read "Kubera" or similar, written in a cursive style.

C. M. Tuberi

**RESIDENT MAGISTRATE**