

IN THE MAGISTRATE'S COURT OF THE REPUBLIC OF FIJI
AT SUVA

CRIMINAL CASE No: 1990 / 2020

STATE
-Vs-
SALASEINI VAKATUTURAGANI

BEFORE : **Mr. Lakshitha Jayawardhana, Resident Magistrate**

HEARING ON : 14th September 2023 and 28th February 2024

NCA RULING ON : 05th December 2023

COUNSEL : Ms. Shankar, N. (State Counsel) for the Prosecution
Ms. Raikaci with Ms. Tabunakia & Ms. Sovalevu (M/S
Ravono & Raikaci Law) for the Accused

JUDGEMENT

A. INTRODUCTION

1. The Accused SALASEINI VAKATUTURAGANI has been charged for one count of Abuse of Office contrary to section 139 of the Crimes Act No.44 of 2009.
2. The Amended Charge dated 14-09-2023 reads as follows:
Statement of offence(a)
Abuse of Office : contrary to section 139 of the Crimes Act 2009
Particulars of offence (b)
SALASEINI VAKATUTURAGANI, on 30th day of August 2019 at Suva in the Central Division, whilst being employed in the Civil Service as an Assistant Superintendent of the Fiji Police Force with the director of the Criminal Investigation Department did an arbitrary act in abuse of the authority of her office by unlawfully seizing items listed in schedule A from NIVEDITA NEHA NANDANI which was prejudicial to the rights of NIVEDITA NEHA NANDANI
3. The accused having pleaded not guilty to the charge, the case proceeded to hearing and was taken before me on 14th September 2023 and 28th February 2024.

Prosecution called six witness and marked a documents PEx01 as evidence. Defence marked three documents as evidence in cross examination as “DEx01” to “DEx03.” The prosecution closed their case accordingly. No Case to Answer application had been made. The court in its ruling dated 05-12-2023 on no case to answer application, having considered that a prima facie case has been made out against the accused sufficiently to require a defence as per section 179 of the Criminal Procedure Act, charge read again and explained the options for defence to the accused. The accused opted to give evidence and call witnesses on behalf of her. Another Five documents “DEx04” to “DEx08” marked as evidence by the defence. After conclusion of the defence case the learned counsel for the accused and learned State Counsel sought time to file closing submissions, which was allowed. After having carefully considered all evidence adduced in this case, and the closing submissions filed by both parties, this Court now proceed to make its judgment.

B. THE LAW

4. In order to prove the Charges, the Prosecution must prove each of the elements of the offence beyond reasonable doubt. This is the standard of proof required in any criminal case. It is further an imperative and pertinent rule of law; in common law legal systems, that the burden of proving each element of an offence lies with the prosecution and it shall not in any circumstance or by any means shifts to the accused person. In Fiji, sections 57 and 58 of the Crimes Act confer this burden of proof on the prosecution. This burden of proof placed on the prosecution is a legal burden of proof and the standard of proof is beyond reasonable doubt. This principal of law shall guide this court right throughout this judgment.
5. If an Accused is relying on any law or exception created by law pursuant to section 59 of the Crimes Act 2009, there could only be an evidential burden on him. There could be a legal burden of proof on an Accused; only when the law expressly specifies the same, requires the Accused to prove certain matters or creates a presumption that a matter exist unless the contrary is proved pursuant to section 60 of the Crimes Act. The evidential burden on an Accused is to adduce or point out to the evidence of a reasonable possibility of the existence of such matters exist or do not exist and the legal burden on an Accused is to be discharged only on the

balance of probabilities. Other than in the above instances there is no burden on an Accused to prove anything.

6. The accused is charged with one count of **Abuse of Office**. Section 139 of the Crimes Act No. 44 of 2009 reads as follows:
*“139 A person commits an indictable offence which is triable summary if, being employed in the civil service, the person does or directs to be done in abuse of the authority of his or her office, any arbitrary act prejudicial to the rights of another.
Penalty – 10 years Imprisonment.
- if the act is done or directed to be done for a gain,
Penalty – 17 years Imprisonment.”*
7. The elements of the offence of **Abuse of office** is discussed in the Supreme Court in **Devo v Fiji Independent Commission Against Corruption** [2017] FJSC 16; CAV0005.2017 (20 July 2017). As guided by the above case, the elements of the charged offence in this case are:
 - a) The accused being employed in the Civil Service as an ASP in Fiji Police Force,
 - b) did an arbitrary act by unlawfully seizing the items listed in schedule A to the charge,
 - c) she acted in abuse of the authority of her office,
 - d) the act was prejudicial to the rights of the complainant Niveditha Neha Nandani
8. Sections, 18 to 22 of the Crimes Act 2009 deals with the fault element of a criminal charge. As per section 18, ‘fault element for a particular physical element may be intention, knowledge, recklessness or negligence’. Sections, 19 to 22 makes the definition of intention, knowledge, recklessness, and negligence.
9. Section 23 deals with the offences that do not specify the fault element. Accordingly, if the law creating the offence does not specify a fault element for a physical element that consists only of conduct, the fault element is intention while the physical element that consist of circumstances or result, then the fault element shall be recklessness.
10. In **Fiji Independent Commission Against Corruption (FICAC) v Vasu** [2021] FJCA 53; AAU0004.2020 (23 February 2021) it was held that: “[21] *It is clear enough that the offence of Abuse of Office section 139 of the Crimes Act is neither a strict*

offence nor an absolute offence. Nor does it specify a fault element. Therefore, the offence of Abuse of Office is in the category of offences that do not specify fault elements and therefore, section 23 comes into operation. What the fault element of the offence of Abuse of Office is then depends on whether it falls into section 23(1) category or section 23 (2) category. This in turn depends on the nature of the physical element of the offence.” Therefore, in considering the charge in the instance case it is alleged that the accused “did an arbitrary act in the abuse of the authority of her office by unlawfully seizing the items listed in the schedule A from Niveta Neha Nandani.” This is the conduct of the accused, thus the fault element as per **FICAC Vs. Vasu** (supra) case and section 23 (1) of the Crims Act shall be intention, in this charged offence.

11. Intention is defined in section 19 of the Crimes Act.

“19. – (1) A person has intention with respect to conduct if he or she means to engage in that conduct.

(2) A person has intention with respect to a circumstance if he or she believes that it exists or will exist.

(3) A person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events.”

12. According to the above legal analysis this court shall now consider and evaluate the evidence adduced during the hearing.

C. EVIDENCE

Prosecution’s Case

13. PW01 was Ms. Nivedita Neha Nandani. She stated that at the moment she resides in Labasa and from March 2019 until April 2023 she resides at 359, Grantham Road, Suva on rent. She was employed as a registered Nurse at CWM hospital from 2019 till February 2023. On 15-08-2019 she received a call from CID police officer namely Salaseini that she had a complaint against her. She called to her mobile while she was at work. Shalaseini mentioned that she had received an e mail from PW01’s ex-facto partner Ravneel that he wanted the items he gifted back from PW01. She would act on behalf of him to collect those items from PW01. PW01 then mentioned that there was a Family court matter was pending and asked for documentary proof of the email or complaint number or anything else. Salaseini mentioned that there was nothing to do with the ongoing DVRO case and she was just acting on behalf of PW01’s ex-se facto partner to collect those items from PW01 and send them to

New Zealand. PW01 had received numerous calls from Salaseini after 2-3 days from 15th August. She received calls to her workplace. Salaseini told that she could use her rights to get her out of nursing. PW01 got frightened. PW01 received a call that if she would not come to CID headquarters on 29-08-2019 at about 3.00pm, Salaseini would send some people to take her from her workplace. She then went to CID headquarters and met Salaseini at her office and explained of her DVRO case and what was happening. Salaseini then told that she had nothing to do with the DVRO case and court and CID works in different way. She told PW01 that if she returned those items, it would be over and out. PW01 then agreed to return the items but requested proper documentation with complaint number for the report. But nothing was given. PW01 stated that the items include I Phone, Air pods, apple watch, smart TV, some clothes, shoes, and jewellery. Those items was at her home at No. 359, Grantham Road. Salaseini told her that she would come on the next day 30-08-2019 to collect it. PW01 agreed to that. She wanted to return those items and wanted to get done with it. 30-08-2019 was a day off for PW01 she was at home, around 5.00 pm Salaseini came to her home with other police officers. All were in civilian. She brought an A4 paper, it had type written that Niveta Neha was giving those items to the police as asked by her partner Ravneel for return. Saleseini told that she brought that A4 paper to list those items. After that she would bring it typed. She told she would bring all the documents afterward. That A4 did not have any stamp or anything to authorize it. PW01 did not sign that A4 paper but she had her friend at home at that time he signed that paper and Salaseini too had signed that she had taken those items. All the items are particularized on it. Particulars of that A4 was handwritten by a police officer. At that time some of the items were in the living room, some were on the top of the dining table. Cloths were outside the washtub and wet. Police officers packed all of them and loaded to the government vehicle, HiLux pickup truck. Salaseini took photographs of it as evidence to be sent to PW01's ex- de facto. PW01 then submitted a printout of a photo of the A4 paper she mentioned earlier, for identification. She stated that the photo was taken by her friend Akash. Salaseini never gave her a typed copy of the list of items as she said. Some of the items PW01 packed and some were packed by the police officer. Salaseini was still in the house at that time. The police was there at her home for about 45 minutes. PW01 got the assurance that she would get a typed document after those items returned to Ravneel in New Zealand, but she did not get it. There were no feedback from Salaseini. She met Salaseini for the first time at CID headquarters and then on 30-08-2019 when she came to her home. PW 01 then identified the accused who was in the accused box.

14. In cross examination, PW01 stated that she had made a statement to the police on 11-09-2019. It was marked in evidence as DEx01 with consent of both parties. Defense counsel highlighted some omissions in PW01's testimony through it. PW01 agreed that accused phoned her and informed her that Ravneel had emailed the accused and expected his stuff back and she asked PW01 to come to her office to discuss it. Accused had threatened PW01 afterwards. Accused had frequently called her and forced her and threatened her. PW01 also had made several calls to the accused. PW01 used different numbers on every occasion she called the accused. On 30-08-2019 PW01 called twice and told that she was ready at home and the accused to come and collect the items. When she called the accused she said that the items were with her, and she just wanted to be done with Ravneel and the CID thing. In response to that conversation, the accused informed her that she would come to her flat to collect the items once she got hold of police vehicle. It was the arrangement between PW01 and the accused. The accused was aware of the DVRO case. PW01 told her about that. When 3 civilian police officers were present on her doorstep, PW01 informed them that a DVRO matter was going on and the Magistrate requested not to give those items. In the DVRO case the magistrate has once subpoenaed the accused in regard to not releasing those items and not for a third person. Then the defense counsel marked the copy of the interim DVRO dated 06-08-2019 as DEX02 in evidence and stated that there was no order to the effect that not to release the items. PW01 then stated that she had filed another DVRO, and the Magistrate had verbally requested not to release the items. When the police officers were at PW01's residence, her friend Akash was also there. She was not dating with him and did not know whether he had a friend who was a son of police officer namely Dalip. PW01 refused the suggestion that Akash's friend, the son of the police officer influenced her to change her story. PW01 was expecting the police team to come to her house on 30-08-2019. Akash came after Salaseini and police officers came. His signature was on the A4 paper. She did not call Salaseini after she left to request her to disregard the signature of Akash and his involvement on her apartment at that day. PW01 denied the suggestion made by the counsel that she was influenced to change her story in order the accused to be charged and lose her job. PW01 did not agree to the suggestion that she had lied to the court.
15. In re-examination PW01 stated that the only reason for her to change her phone numbers was at initial call, the accused was really nice to her. But afterwards her tone changed. She started threatening her. When she changed the phone number, the accused called to the hospital land line and said she would call ministry of health to get her down. The accused also said that PW01 was playing smart and if

she did not come to CID HQ, she would somehow get her down. The phone was speaker on mode and PW01's supervisor had heard that and advised her to go to the police. After that, PW01 changed her phone number again and at some point she agreed to whatever the accused was saying since she wanted to get rid of it. She was threatened and once three police officers in civils came to her doorstep to ask her to come to CID as per the accused's orders.

16. PW02 was Mr. Akash Rajendra Kumar Chuhan. He stated that he was a friend of PW01 and in 2019, she was living in Raiwaqa. On 30-08-2019 at around 4.00pm to 5.00pm PW02 received a call from PW01 and told him that police officers had come to her home. He then visited her place and saw 3 police officers inside the house. There were items on the table and list of those items was shown to him. There was a lady police officer who was sitting on a chair and noting down things. The items was like shoes, handbag watches etcetera. He was not informed about the reason for that. Then the counsel showed the document marked for identification by PW01 to PW02. He identified it as the document which listed down the items taken by the police from PW01's house on that day. Actual document was shown to PW01 and PW02 on that day and PW02 took a photograph of it before he signed that document signed by him. After signing the document, the police team left immediately. The actual document that he had signed never reverted back to PW01. Then PW02 identified the photo of the said document and marked it as evidence as "PEX01".
17. In cross examination PW02 refused the suggestion that he was at PW01's house on 30-08-2019 before the police came there. He agreed that his phone number at that time was 9921928. He admitted that on 30-08 2019 at 17.33 hours and 17.57 hours there were two calls made to the accused phone (9905541). The incoming call record of accused was marked as evidence "DEX03". It was suggested to PW02 that the first of the above call was made by PW01 to the accused to ask her to come and pick up the items and the second call was made by her to request the accused to erase any trace of involvement of PW02 on that day. PW02 stated that he could not remember it. PW02 stated that he had taken the picture of the list marked as PEX01 before signing it. There were no re-examination taken place on this witness.
18. PW 03 was Police Sergeant Osea Tunidau. He stated that he had 18 years of experience in the Fiji Police force now. He was attached to the CID Economic Crimes unit in 2019 and his supervisor at that time was ASP Salaseini Vakaturagani, the accused. On 30-08-2019 after around 4.00pm accused

instructed him to assist her and then he drove her and constable Taitusi to a place in Grantham Road, Raiwaqa in vehicle no GQ 271. He was the driver. When they reached the particular place in Grantham Road, an Indo-Fijian lady was standing at the porch. The accused and PC Taitusi went inside the house with that lady. PW03 was waiting in the vehicle. After about half an hour, they came out from the house with a flat screen TV and with some other items in a plastic bag. They loaded those items to the police vehicle and then came back to CID headquarters. During that time PW03 did not ask the accused the reason of visiting that house. They were not in a position to question their supervisors. He followed the supervisor's instruction. After coming to the CID HQ, the accused informed that she would deliver those items to the where it supposed to be delivered. He never entered the aforesaid lady's house in Raiwaqa. PW03 stated that according to his experience, there has to be a search warrant to seize the items and when seize, a search list has to be prepared listing the items seized and the police officer who conducted the search and the suspect has to sign that list. That should be the procedure if there is an investigation going on. PW03 stated that on that day he was not informed or shown by the accused of having any search warrant before going to the lady's house in Raiwaqa. He had not come across during his period as a police officer of seizing items without a search warrant. He worked under the accused for about 2 years and as police officers they do not question the instruction come from their supervisors.

19. In cross examination PW03 stated that while he was waiting in the car in front of the house at Raiwaqa on that day he did not hear any commotion inside the house. If the police wants to conduct a search in a house or an office they need to get a search warrant. Once they have a search warrant it is not necessary to inform the party that is going to be searched. It may be conducted as a surprise. On the date of the incident at the Indo Fijian lady's house at Raiwaqa, PW03 had no idea whether the accused and that lady was in a prior arrangement or not. But as he had seen the events he could confirm that the lady of that house had known that the police party was coming there. There were no re-examination on this witness.
20. PW04 was DC 4663 Taitusi Lualala. He stated that He was in Fiji Police force for 13 years and in 2019 August he was attached to Economic crimes unit at CID. Accused was also his supervisor at that time. On 30-08-2019 he received instruction from accused to go to a house in Grantham Road Raiwaqa. Then at about 4.00pm on that day himself, PW03 who was the driver and accused boarded vehicle no GQ 271 and proceeded to house at Grantham Road. When they reached there, the gate was

locked, then it was opened automatically, the vehicle went inside and PW04 saw an Indo Fijian Girl standing at the porch. Then while Pw03 was waiting in the vehicle, PW04 and accused got off from the vehicle and the Indian girl welcomed them. When they went inside the house, they were offered to be seated. PW04 saw the cloths and jewellery items were readily available and prepared in front of them. After few moments a young Indian boy also came to the house. Then the accused was given a piece of paper by the accused to note down all available items. It was an A4 paper, PW04 did not recall what was written down on it. He noted down the items that was there in front of them. PW04 then identified PEx01 as the piece of paper that he had all the items that was readily avail be in front of them on the date of incident. PW04 then stated that when police officers conducting an investigation and if they are going to seize items, there has to be a search warrant for that purpose. PEx01 was not a search warrant. He was just acting with the instruction of the accused. But when he saw the items were readily available at that house, he thought that the accused had already contacted the Indian lady and she had given those items voluntarily. PW04 seen that scenario as the arrangements had already been done and they went and collected the items. During his tenure as police officer, that was the first time that this type of incident happened. PW04 had worked under the accused for about 01 year by that time. She had an open-door policy towards her officers. PW04 then identified the accused who was in the accused box. Answering to the court PW04 stated that PEx01 had his hand writings, and it was not the original document, and it was a copy.

21. In cross examination PW04 stated that when they reached the house in Grantham Road, the items were readily available, and he was told to note them down in the paper. PW04 agreed that as police officers they are duty bound to assist any person who seeks assistance to resolve any dispute to stop him or her from committing an offence. PW04 further stated that to his experience, search warrants are prepared and executed in the instances where the items were stolen, sold or the occupier refuses to release it to police. On the day of question, it was not felt by PW04 that they were going for a search to seize. In this case it was seen to Pw04 that there was a pre-arrangement to retrieve the items and therefore there was no need for a search warrant. There were no re-examination on this witness.
22. Prosecution witness 05 (PW05) was W/ Sargent 2511 Motea Tuwai. She stated that she has 25 years of service in the Fiji Police Force, and she had worked with the accused in sexual offence unit of the central Division in 2013. On 30-08-2019she came to attend a meeting and after that she called the accused to request for a life

home. She called her after 6.00pm. Accused agreed to take her to Nasouri, then she walked to accused's office at CID HQ and waited there till the accuse finished her work. Then they went together in the car, the accused had to drop some items near roundabout in Navosai. They went in the private car belonging to the accused. Just two of them. They drop the items at the last house at Navosai roundabout. The items was handed over and PW05 did not question about it and the accused did not tell anything about it. In cross examination PW05 stated that she only saw a shopping bag containing wet clothes were handed over to an Indo-Fijian lady. There were no re-examination.

23. PW06 was Ms. Anita Devi. She stated that she is doing a catering business. One day in 2019 her brother-in-law, Ravneel Lakshman called her and told that to receive some of his items that would be dropped by police officers on that day at her place. He mentioned that it would be expensive items like watch, and shoes. On that day at about 6.00-7.00pm, police officers came into her place at Navosai, Narere. Ravneel mentioned the police officer's name as Sala. She came and asked PW06's name and asked whether Ravneel told her something. And they took out a carton and she received it. The police officers just talked to her for a while gave the items and went. PW06 and her son was there. Ravneel said those items belongs to him and he had given it to his ex-girlfriend Neha. She never asked the reason for returning the items. Ravneel said just received the items and kept it with her until his father came from Labasa to collect it. After about two weeks, his father came from Labasa and picked those items.
24. In cross examination PW06 said that she never open the carton but in one envelope, she checked it had a phone and a watch. Police officer did not say anything. Later, Ranil told her that all the items he asked for had been received. Ravneel is her husband's first cousin.
25. By leading those evidence, prosecution rest their case.

Defence Case

26. Accused gave evidence in the defence case. But no witnesses were called on behalf of her, as informed earlier. She stated that she has 36 years of service in the Fiji Police force and currently holding the rank of Assistant Superintendent of Police. She served various areas of police force including Criminal Investigation Department and as Divisional Crimes Officer, Northern division in Vanualevu. By 2019 August she was again posted to CID Head Quarters as an ASP. About 15-08-

2019 a person namely Ravneel Ravitesh Latchman called her from New Zeland. When she was working in the Northern Division, her official mobile no was written on the vehicle allocated to her. Therefore, she is receiving calls from public. Ravneel requested to collect some of his items from his former girlfriend. He stated a list of items, then the accused gave him her email for him to send that list. He then emailed to the accused in return and stated the items that he wanted to collect from his former girlfriend and her contacts. After about 2 days' time accused called the former girlfriend of Ravneel and told her that Ravneel requested the accused to collect his items from her. The items was listed in an email. That girl then told the accused that she was at work, and she would be off in 2 days, and she would come and visit the accused. But she did not turn up in 2 days. Then the accused called her again and she stated that she was busy. Accused informed her to take her time. But Ravneel also called the accused and asked the progress of his request. After two weeks Ravneel's former girlfriend came to accused's office. The conversation went well. Accused showed her Ravneel's email. The she sated "Oh, I am surprised that he wanted all these girlish items, that are for girls." The girl told the accused that those items were brought to her by Ravneel. She was in tears and crying. She then told the accused that she would return all those items because of they had been brought by him. She then told the accused that she would go back home and pack those items and call the accused. She then called the accused on the next day twice and told that all items were ready and packed and for the accused to come and collect it. The accused then asked her to bring it to her office then the girl said that she did not have the taxifare for that. The accused told her that then she had to wait for a police vehicle to arrange and she did not want to use her private vehicle for this purpose. Then on 30-08-2019 at around 5.00pm accused arranged the police vehicle and alone with PW03 and PW04 went to the complainant (PW01) Neha's house at Grantham Road. When they arrived at that place, the electric gate was closed, Neha was standing on the veranda. She waived them to come in and the automatic gate was opened. Accused and PC Taitusi (PW04) went in following Neha. They greeted each other and Neha told her that everything was packed. Accused asked PW04 to get piece of A 4 paper and list down the items. They did that inside the house, when they entered there were only three of them, accused the asked Neha whether everything was packed. She saw everything was in boxes, even the TV and jewelleries. Accused then asked Neha to take out jewelleries from box and to keep it on the table to take photos of it. She told Neha that she need photographs otherwise Ravneel would complaint against her or Neha. She took photographs of every item including the TV. While they were unpacking and photographing the items an Indo Fijian man came. After taking photos, they packed

everything again. Neha said that she wanted to get rid of everything and from Ravneel as well. All the things was listed on A4 paper. Then they loaded everything into vehicle, then Neha came with plastic bag containing wet cloths and told that those also brought by him, and she wanted to get rid of it. Then they came back to their office. On their way, Neha called her again by a different phone no. and asked her not to reveal the name and the signature of her friend who signed at the bottom of the items list (PEX01) to Ravneel. She said she did not want Ravneel to know that man was at her home at that time. Just before they entered their office Ravneel called, and the accused asked him to arrange someone to come and pick up the items. Accused also told Ravneel that she would Viber all photos that were taken. At around 7.00 pm Ravneel called again and asked her another favour that to drop those items at his uncle's place at Narere. Since the acused was going home in Nausori, with PW05, she loaded the items to her private vehicle and drove it according to the directions given by Ravneel. When they reached the roundabout Ravneel's Aunty was waiting with one boy and another man and they took the items inside. Accused showed the list to that lady and asked to check it. She agreed, the accused went away. Accused stated that she never threatened PW01, and she had no reason to do so. She was not told anything about a DVRO by PW01 and she was never summoned to court on PW01's DVRO. PW01 never told her that at any time Ravneel assaulted her.

27. The accused further stated that a search warrant is required when there is reasonable suspicion that relevant evidence that would be found in a house, building, ship, or vehicle ect. And when search warrant is obtained, approached to that particular place would be done unannounced to the occupants. In the instant case, PW01 called the accused and told her to come and collect the items that already had packed. Accused stated that since she was going to collect and not to search, there was no need for a search warrant. Accused further stated that this was done due to the request made by Ravneel, who sought her assistance as a police officer, therefore no court order is needed. The accused then marked as "DEx04" copy of her Position Description as evidence with consent of the State Counsel. It has a requirement of assist in other areas of Policing in Fiji Police Force. Accused stated that every police officer is a community police officer, that means they have a duty to serve the community irrespective of their particular department they work. It was stipulated in their code of ethics also, to assist those who are in need of assistance whether the case is reported or not. Police is there to assist the community. The accused then marked as "DEx05" a copy of the Code of Ethics of

Fiji Police Force. The accused stated that all the assistance she had rendered to Ravneel was a part of her job description and also Police Code of Ethics.

28. The accused stated that after she delivered those items, about 2 weeks later she received a call from police complaint department and informed that there was a complaint against her for collecting items from Neha. She got socked as all conversation went very smoothly and she had taken every step to prevent any complaint against her. The nature of the complaint about collecting items from PW01. Although, police complaint department stated that they wanted to record a statement of the accused, she conducted an interview of the accused. She was presented before a tribunal. She was interdicted on half pay for 5 months. After 5 months her interdiction was lifted. Accused marked the letter uplifting of interdiction and posting as "DEx06" in evidence. The charge against her before the tribunal was conduct. That was based on she was collecting items from PW01's residence. Accused stated that when requested by public, rendering assistance is a part of her police duties. She did not believe that she had done anything wrong. The tribunal punished her with 07 days' pay deduction and Commissioner's final warning letter. Accused submitted those letters marked in evidence as "DEx07" and "DEx08" respectively. She was not interviewed for the charged offence of abuse of office.

29. In cross examination accused stated that she is bound by the Fiji Police Code of ethics and standing orders. She did not acquaint with Ravneel before he called her, and she did not know PW01 before 2019. In her 36 years of service there were so many cases that they provided assistance, even to collect items. PW01 was working at an intensive care unit of the hospital as a nurse. She showed the email she received from Ravneel to PW01 at her officer. When she went to PW01's house on 30-08-2019 the items were already packed for them to take away. The accused having observed PEx01 stated that it was the same document she had sighted on 30-08-2019 but it don't have the signatures on it. She had cross checked the physical items with that list on that day. PEx01 prepared to protect her and PW01 from any later complaint by Ravneel. That was not an official document of the Fiji Police Force. She gave authority to PW04 (Taitusi) to prepare PEx01. She had informed PW01, that the signed PEX01 would be send to Ravneel for him to realize that all items was received from PW01. The accused stated that she had not told PW01 and PW02 that she would revert back the updated document (PEx01) after signing it. She did not agree to the suggestion that she acted expeditiously because she knew Ravneel personally. She had pestering and calling PW01 was that Ravneel was kept

pressuring her on collecting his items. It was not necessary to note down Ravneel's request in her police notebook or elsewhere. She did not agree to the suggestion that she had threatened PW01 that if she failed to come to CID HQ she would get trouble in her job. She did not agree to the suggestion that she had acted on Ravneel's request since it was entirely personal to her and not with regard to her line of duties.

30. In Re-examination, the accused stated that in PEx01 the signature of PW 02 was not there as it was a copy taken from a photo. With those evidence, the defence closed their case.

D. ANALYSIS AND FINDINGS

31. I now consider whether the elements of the offence of **abuse of office** are established by the prosecution's evidence to the standard of proof. The elements are:
- a) The accused being employed in the Civil Service as an ASP in Fiji Police Force,
 - b) did an arbitrary act by unlawfully seizing the items listed in schedule A to the charge,
 - c) she acted in abuse of the authority of her office,
 - d) the act was prejudicial to the rights of the complainant Niveditha Neha Nandani
32. The identification of the accused in this case was never challenged. Dock identification was made by the complainant PW01. PW03, PW04 and PW05 were police officers whom they all have worked with the accused in the Fiji police force for considerable time. They all knew her personally and aware of her rank as Assistant Superintendent of Police. These contentions were not challenged, and I therefore hold that prosecution has established beyond any reasonable doubt the element that "the accused being employed in the Civil Service as an ASP in Fiji Police Force."
33. The main witness of the prosecution case was the complainant PW01. Her core evidence portion with regard to the charged offence is that, her ex-de facto partner Ravneel contacted the accused and emailed the list of items that had been gifted to her. Thereafter the accused had informed the same to PW01 and requested to return those items to Ravneel. Subsequently, the accused with another police officer came to PW01's house and uplifted those items. In addition, PW01 in her evidence highlight the fact that the accused had telephoned her several times, even to the

land line of her hospital, and the accused had threatened her as well. However, in the cross examination it was suggested by the defence and the accused in her evidence also denied the allegation of any threat being made to the complainant PW01. Be that as it may, the most important aspect of the evidence of PW01 is to establish the fact that the accused did an arbitrary act by unlawfully seizing the items listed PEx01. If PW01 had handed over the listed items to the accused on her own free will, then there will not be an unlawful seizure. PW01 in her evidence in chief stated that “The accused told me that if I returned those items, it would be over and out. I then agreed to return the items but requested proper documentation with complaint number for the report. But nothing was given. Those items include an I Phone, Air pods, apple watch, smart TV, some clothes, shoes, and jewelleryes.” (Emphasis are mine) In cross examination, answering the defence questions PW01 confirm her position and stated that she called the accused on 30-08-2019 twice and told her that she was at home and items were ready and asked the accused to come and collect it. PW01 stated that “the items were with me, and I just wanted to be done with Ravneel and this CID thing.” Also, in PEx01, the list of items, had two parts. A typed written heading and handwritten list. The typed written heading read as: “At CID HQ at.....I Nivedita Neha NANDANI of 359, Grantham road Suva, handed over the following items to Police..... as requested by my boyfriend Ravneel LUTCHMAN who resides in Auckland, New Zealand.” This also corroborate the fact that the handing over those items were pre-arranged. This court had the opportunity to observe the demeanour and deportment of the complainant giving evidence before this court and I do not have any reason to disbelieve her. Therefore, as admitted by the complainant in her evidence, the items listed in PEx01 and the schedule A to the charge had been given to the accused with the consent and agreement of the complaint PW01. Therefore, there cannot be an unlawful seizure of those items. If there is no unlawful seizure, there cannot be an arbitrary act in existence.

34. Arbitrary act in an abuse of office offence is defined in **Devo v Fiji Independent Commission Against Corruption (Supra)** case. It observed that: “21. *The Court of Appeal dealt with the question of ‘arbitrary act’ and cited previous precedents where ‘arbitrary act’ had been interpreted to mean ‘as nothing more than the exercise of one’s own free will’ (Tomasi Kubunavanua v The State (Criminal Appeal No.AAU0008 of 1992 (5 May 1993), as “an autocratic act, an act not guided by normal procedures but by “whims and fancies” of the accused (State v Humphreys Kamsoon Chang (HAC 0008 of 1991 (1 Nov 1991), as ‘an unreasonable act, a despotic act which is not guided by rules and regulations but by the whims of the accused’ (The State v Rokovunisei (HAC 37 of 2010 (26 April 2012)).*”

35. In the instance case, as admitted by PW01, if she agreed to return the items to the accused, to be send back to her ex-de facto partner in New Zealand, then, the accused had not acted on her own free will or not performed an autocratic act, or not acted on her own whims and fancies. Therefore, as defined in **Devo** (Supra) case, there is no arbitrary act had occurred in the instance case.
36. If there is no arbitrary act had occurred then the accused cannot act in abuse of the authority of her office. On the other hand, as admitted by PW01 in her evidence, she had voluntarily returned the gifted items that she received from her ex de facto partner, then there is no prejudice occurred to her rights as well. Therefore, the prosecution was unable to establish those elements beyond any reasonable doubt.
37. All other prosecution witnesses' (PW02 to PW06) contentions are auxiliary to the contention of the complainant PW01. As I analysed above, the very foundation of the PW01's evidence was unable to establish several elements of offence; then the other prosecution witnesses evidence are nessasaraly unable to rebut the fact that PW01's voluntariness in handing over the items mentioned in PEx01. PW03 also stated that when they went to PW01's house at Grantham Road, those items listed in PEx01 was there readily packed to deliver. That also establish the fact that PW01 had voluntarily handed over those items. PW01's friend Mr. Akash Chouhan (PW02) who came to her house at the time police officers were there, stated that he had signed PEx01 on behalf of PW01. And he had taken a photo of that list before he signed. In his evidence also PW02 has not mentioned any forceful seizure of those items.
38. Now I analyse the defence evidence. The accused giving evidence under oath stated that she was contacted by PW01's ex-boyfriend Mr. Ravneel Lutchman from New Zealand and requested her assistance to recover the gift items that he had given to his ex-girlfriend PW01. The accused then helped Ravneel by informing that request to PW01 and coordinating the handover of those items. After PW01 handed over the items listed in PEX01, the accused taken it to Ravneel's aunts house at Narere and handed over it to her, as instructed by Ravneel. As stated in **FICAC Vs. Vasu** (Supra) case (paragraph 10 of this judgement), prosecution has to establish the fault element of intention of the accused in order to successfully establish the entire elements of the charged offence. However, this court in considering the defence evidence on balance of convenience, hold that those defence evidence creates a reasonable doubt in the prosecution's case on the very existence of the accused's criminal intention in the charged offence. Benefit of that doubt shall go to the defence.

39. This court also noted that the accused had submitted in evidence her job description marked as "DEx04" and Code of Ethics of Fiji Police Force as "DEX05". In the Code of Ethics, it is mentioned that every member of the Fiji Police Force is duty bound to "Help those in need of assistance."
40. In light of the aforesaid analysis of the prosecution and defence evidence, this court holds that the prosecution has been unable to establish the elements that the accused did an arbitrary act by unlawfully seizing the items listed in schedule A to the charge, and the accused had acted in abuse of the authority of her office, and the said act was prejudicial to the rights of the complainant PW01. Further, the accused had successfully created a reasonable doubt inexistence of the fault element of the charged offence.

E. CONCLUSION

41. Upon careful consideration of the evidence that was adduced on behalf of the prosecution's case and the defence, this court is of the view that the prosecution has not established through credible and admissible evidence, some essential elements of the charged offence and that there are reasonable doubts, on the proof of this charge against the accused. Benefit of such reasonable doubt in the prosecution's case goes to the accused.
42. As such this court finds the accused above named is not guilty to the charge against her.

F. ORDER OF THE COURT

43. The accused Ms. SALASEINI VAKATUTURAGANI is found not guilty to the charge against her and therefore she is acquitted hereby.

G. RIGHT OF APPEAL.

44. 28 days to appeal to the High Court.




Lakshitha Jayawardhana
Resident Magistrate

At Suva, on this 16th day of April 2024.