

IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
Criminal Appeal No. 61 of 1980

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Between:

THE DIRECTOR OF PUBLIC PROSECUTIONS

and

JAG NARAYAN SINGH
s/o Durga Buksh Singh

Mr. V. Maharaj for the Appellant
Mr. K.C. Ramrakha for the Respondent

JUDGMENT

On the 13th May, 1980 the respondent was convicted in the Suva Magistrate's Court after having pleaded guilty at the end of the prosecution case to the offence of allowing the premises at 8 Kumi Road, Nasese on the 30th May, 1979 to be kept for the purpose of a hotel without a licence contrary to Sections 4(2) and 10(1) of the Hotels and Guest Houses Act 1973.

Upon his conviction the respondent was fined \$200 or 6 months' imprisonment in default of payment of fine.

The Director of Public Prosecutions now appeals against the sentence of a fine passed on the respondent on the ground:

"That the said sentence is manifestly lenient having regard to the nature and circumstances of the offence."

The facts of this case show that respondent's wife, Prabha Wati Singh, had had a licence to manage the premises in question as a guest house. Prior to that the licence was in respondent's name but was never renewed. The licence in Mrs. Singh's name came up for renewal before the Hotel Licensing Board on 21st December, 1978 but this was refused and since then the premises at 8 Kumi Road, Nasese has not had any licence as a guest house. On the 30th May, 1979 following a police raid on the said premises, a number of people, both men and women were found


inside the premises who had earlier registered as guests and paid the necessary charges. The evidence shows that the respondent was at all material times operating the premises and it was he who authorised acceptance of paid guests at the premises. The respondent has a previous conviction of two counts for this type of offence and on that occasion he was fined \$100 on each count. This was in 1973. Respondent is married with five children and is working as an accounts clerk.

The Legislature prescribes a maximum fine of \$1000 on first conviction for this offence and \$2000 with or without imprisonment on every subsequent conviction. It is clear from this that the Legislature views with some gravity the commission of this type of offence.

However the matter of sentence is one of discretion for the trial court and in this case while it may with some justification be said that the sentence of a fine of \$200 is lenient, I am not as certain that it is manifestly so having regard to the background and station in life of the respondent. There is no suggestion that the respondent has become a wealthy person out of his illegal activity. While this Court may well have passed a different sentence upon the respondent if sitting at first instance such factor alone, as is well established, is no ground for disturbing a sentence passed in the proper exercise of a Court's discretion. Consequently I can find no proper basis for interfering in this case.

Be that as it may, I would like the respondent to be clearly and unmistakeably warned that if he is again convicted for operating guest houses without a licence in contravention of the Hotels and Guest Houses Act he could fairly expect a much stiffer sentence than it has been his good fortune so far to avoid.

The appeal is dismissed.


(T. U. Tuivaga)
Chief Justice