

IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
CRIMINAL APPEAL NO. 16 OF 1981

BETWEEN:

CASTLE TRADING (S.P.) LIMITED

APPELLANT

- and -

COMMISSIONER OF INLAND REVENUE

RESPONDENT

Mr. F.G. Keil for the Appellant.

Mr. M.J. Scott for the Respondent.

J U D G M E N T

On the 26th January, 1981, at the Suva Magistrate's Court the appellant company through its counsel entered a plea of guilty on two counts of failing to deliver particulars as required by the Commissioner of Inland Revenue contrary to regulation 20A of the Income Tax (Employment) Regulations and section 92(2) of the Income Tax Act No. 6 of 1974.

On the first count the appellant company was fined \$1 a day for 180 days and on the second \$3 a day for 180 days.

The Company appeals against the sentences on the grounds that the fines were wrong in principle and/or manifestly excessive.

The particulars of the two offences disclose that the Company had defaulted on each occasion for a period in excess of 180 days. The default in the first instance was 2 years and 265 days and in the second 265 days.

The learned trial Magistrate no doubt following section 209 of the Criminal Procedure Code which limits the time for summary trial, limited the daily fine to 180 days on each count a period of just under the limit of 6 months.

I can see no justification for the trial Magistrate trebling the fine on the second count. If the ^{appellant} applicant company had had a previous conviction for a similar offence an increased daily fine would be justified but not where the appellant is convicted at the same trial of two similar offences.

Section 92(2) provides for a maximum fine of \$10 a day for every day during which a person fails to comply with the provisions of section 53 of the Act or regulations made under sections 80 or 106 of the Act. It is a defence however if it is established that such failure was not due to the neglect or default of the defendant or any person acting on his behalf.

In mitigation counsel for the appellant company explained the reasons for the company's failure to deliver the required particulars. As regards the first count the company had commenced trading in September 1977 and accounts for the company were prepared by an overseas company. In the period covered by the second count local accountants had been appointed and due to an oversight the accounts were not delivered to the Commissioner when required by law.

Those excuses are not defences to the charges but no doubt the trial Magistrate took into account the pleas of guilty and explanations given for committing the offences.

Mr. Keil referred to three criminal appeals dealing with similar cases where this Court confirmed or imposed much lighter fines for each day default had continued.

While I would agree that there should be some uniformity in sentencing, the three cases, Mr. Keil relies on are distinguishable.

Criminal Appeal No. 52 of 1976 D.P.P. v. Baravi Joinery Ltd. concerned offences under the Companies Ordinance where the Magistrate had imposed a lump sum penalty instead of a fine for each day of the default. Mishra J. imposed a penalty of 3 cents on the first count and 2 cents a day on the second and third counts. He criticised the Registrar of Companies for his delay in seeking the assistance of the Courts.

The Magistrate in the case of the Commissioner of Inland Revenue v. Shiu Charan Cr. App. No. 10 of 1977 had fined Shiu Charan 10 cents a day. The Commissioner appealed on the grounds that the sentence was manifestly lenient. Grant J. in dismissing the appeal stated that whether or not a sentence is manifestly excessive or inadequate depends on all the circumstances. In Shiu Charan's case his employee whose duty it was to deliver the particulars in time had committed a criminal offence and fled. While those facts did not constitute a defence under the provisions of section 92 of the Income Tax Act it was a matter the Magistrate was entitled to and obviously did take into account in mitigation.

The last case relied on by Mr. Keil was Cr. App No. 21 of 1977, Commissioner of Inland Revenue v. Krishna Sami where the Commissioner had appealed on the grounds that the imposition of a fine of 20 cents a day where the maximum fine was \$40 a day was manifestly lenient.

Grant J. stated in that case :

"An appellate Court does not interfere with sentence merely because the appellate court, if sitting at first instance, would have imposed a higher or lower penalty. The sentence must be shown to be wrong in principle and manifestly inadequate or excessive."

Where the legislature fixes a maximum penalty of \$10 a day for a continuing offence a fine of \$1.00 a day cannot be considered wrong in principle in the sense that it does not allow for what might have been a far worse

case for which a larger daily fine could be properly imposed. In my view Magistrates in the past may have been influenced more by the totality of the fines where there has been delay over a long period. In the instant case a total of \$180 in fines for 180 days default appears a big fine but if default had been one day, a \$1.00 fine would not be considered excessive. However, the appellant would ask this Court to reduce the fine to 10 cents for a default of 1 day and for that fine in respect of each day thereafter. The fact that the offence continues for a long period of time is not in my view a reason for reducing what a Magistrate considers on the facts before him is the proper fine for the commission of the offence in respect of every day the offence continued. The provision of a daily fine is not merely to punish the offender but to ensure that the law is complied with.

The fine of \$1.00 a day for 180 days on the first count was not in my view excessive and the appeal against this sentence is dismissed.

I allow the appeal against the sentence on the second count and in lieu of the fine of \$3.00 a day for 180 days I substitute a fine of \$1.00 a day for 180 days.

If the appellant has paid the fine on the second count, the sum of \$360 is to be refunded to it.



(R.G. KERMODE)

ACTING CHIEF JUSTICE

SUVA,

4th JUNE, 1981.