

IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
Criminal Appeal No. 9 of 1983

288
000007

Between:

THE DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

and

MAHEND SINGH s/o RANJIT SINGH

Respondent

Mr. K. Bulewa for Appellant
No appearance for Respondent

JUDGMENT

On 19th October, 1982 in the Suva Magistrate's Court the respondent was on his own plea convicted on two counts; on first count of driving a motor vehicle of a class he was not entitled to drive contrary to sections 23(1) and 85 of the Traffic Act, on second count of driving a motor vehicle in contravention of third party risk contrary to section 4(1)(2) Motor Vehicles (Insurance) Act and was sentenced on each count to a fine of \$30 or in default 30 days' imprisonment.

This appeal is brought by the Director of Public Prosecutions on two grounds as follows:

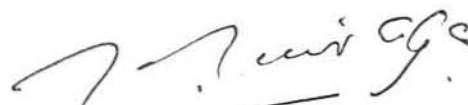
- "1. That the learned Magistrate failed when considering special reasons in Count 2 for not disqualifying the respondent under the mandatory provisions of Section 4(2) of the Motor Vehicles (Insurance) Act, Cap. 152 - 1967 Edition - to hear evidence in relation to these special reasons on oath. (R. v. Lundt-Smith (1964) 2 WLR 1063; R. v. Indar Nalcker Suva Review 4/78; DPP v. Jone Osali Suva Cr.App.39/78).
2. That the learned Magistrate failed to apply the principle that the circumstances which are held to be special must be special to the offence and not to the offender. (Whittal v. Kirby (1964) 2 All E.R. 552; R. v. Gokul Singh Suva Cr.App.19/75) and in so doing found special reasons in error."

Explaining why he did not suspend respondent's licence in terms of section 4(2) of the Act, the learned Magistrate pointed out that respondent had a licence for Groups 2 and 6 and he had earlier ridden a motor cycle with his own number plate and thought he could ride this motor cycle for a short distance only.

It was submitted that the learned Magistrate should have heard evidence on special reasons before adjudicating upon the matter. It was also submitted that the circumstances of the case must be special to the offence and not the offender.

With respect I accept these submissions as sound in law and practice. It follows that the learned Magistrate erred in failing to disqualify respondent from holding a driving licence as required under the mandatory provisions of the Act in question.

The appeal is allowed to the extent that in respect of the second count the respondent in addition to the sentence of a fine is disqualified from holding a driving licence for a period of twelve months with effect from the date hereof.



Chief Justice

Suva,
22nd April, 1983.