

IN THE HIGH COURT OF FIJI AT SUVA
REVISIONAL JURISDICTION

Criminal Review Case No. HAR 005/2009

Between: **STATE**

Complainant

And: **DOREEN SINGH**
d/o Ranjit Singh

Respondent

Hearing: 21 August 2009

Ruling: 27 August 2009

Ms Tuiketei for the State

Ms Rabuku for the Respondent

RULING

1. On the 14th August 2009, Miss Mary Muir, Resident Magistrate, presided over the first call of 30 charges of forgery and money laundering against this accused. The accused pleaded not guilty and the terms of bail settled. At the end of the hearing, Ms S. Shah, Counsel for the accused made an application for an order prohibiting media coverage of the proceedings. Ms Shah told the Court that this was on the basis that the accused being an Indo-Fijian would be seriously disadvantaged in her marriage prospects if details of her alleged wrong-doings were published.

2. In lieu of the order applied for, the learned Magistrate ordered name suppression and prohibited photos or filming of the accused. She then adjourned the case to the 27th August next for mention and the serving of disclosures.

3. Being uncertain as to the learned Magistrate's authority to make such an order, this Court called for the file to institute review proceedings pursuant to section 323 of the Criminal Procedure Code.

4. Ms Rabuku appeared before me on behalf of Ms Singh at the hearing of the review. She submitted that the accused is a 30 year old marriageable lady and that the investigation has affected her drastically. Being a member of Fiji's Indian community any appearance in Court, let alone a conviction, would taint her name. It was envisaged that the matter would eventually be heard in the High Court and the assessors would be prejudiced by the publicity. She added that the accused is suffering from clinical depression as a result of the proceedings, but no evidence of this was before the Court.

5. Ms Tuiketui appeared for the State in this review as well as having appeared below. She very helpfully summarised the submissions made there by Ms Shah which included invoking the precedent of suppression of former Prime Minister Mr. L. Qarase's name in his proceedings before the Court. That submission was misleading because it was simply not true. The true question in this review is: does a Magistrates Court have the power to make a suppression order?

The Law

6. Section 67 of the Criminal Procedure Code provides limited assistance in providing authority. It reads

“ The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed an open court to which the public generally may have access, so far as the same can conveniently contain them:

provided that the presiding judge or magistrate may, if he thinks fit, order at any stage of the inquiry into or trial of any particular case that the public generally or any particular person shall not have access or be or remain in the room or building used by the Court.”

7. In the English case of **Attorney-General v Leveller Magazine Ltd** [1979] AC 440, the House of Lords was dealing with the question of whether a Court could hold in contempt the publishers of a magazine that ignored a Court order not to publish the name of a party to proceedings. The Court made reference *obiter* to the power of a Magistrate to order name suppression. They said that as a Magistrate had the power to sit *in camera* then he must have the power to take a lesser step of allowing a name to be withheld from the public in proceedings before it. Their Lordships were however mindful of the very limited scope of the powers both to sit *in camera* and to suppress names.

Lord Diplock said, at p 451H

“ the reason for a ruling which involves departing in some measure from the general principle of open justice within the Court room is that the departure is necessary in the administration of justice.” And

per Lord Scarman at p.473G

“if a Court is satisfied that for the protection of the administration of justice from interference, it is necessary to order the evidence either be heard in private or be written down and not given in open Court, it may so order.”

8. This decision of the House was followed in Fiji in **State v Josefa Nata** HAA47/94, in which Kepa J said:

“although there is no specific mention of prohibition of publication of names or name suppression order, in my view if the Magistrate’s Court is empowered to prohibit people from entering the Court then it follows that it can also prohibit disclosure or publication of any matter that occurred in the courtroom including names of those who are involved in a court case subject to the principles which both the English House of Lords and NZCA agreed to, relevant to the test to be applied to making such orders.

The test is that the order is necessary:-

(1) For the due administration of justice; or

(2) In order to serve the ends of justice”

9. The authorities make it clear therefore that the learned Magistrate did indeed have the power to make her order, but that power was restrictive and should have been in satisfaction of the test of administration of justice.

Analysis

10. There is no question of justice being compromised in the instant case. Whether Ms. Singh’s name be published or not, it will have absolutely no bearing on the conduct of the case. Public embarrassment at an one’s judicial predicament is not reason enough to seek suppression of name. Despite the fundamental presumption of innocence, if a person’s actions bring suspicion upon him(her)self, then that person must bear the consequences of that behaviour including having their affairs brought into the public arena. To allow this application would open the floodgates of name suppression by applicants who may wish to apply for high office, or to maybe one day read the news on Fiji One or any other similarly frivolous application.

11. Ms Rabuku's submission that the assessors in a High Court trial would be prejudiced against her client cannot go without comment. It is a matter of importance in every High Court trial in this jurisdiction and I would think in every other, that the assessors are warned in the strongest of terms to ignore any media coverage they may have read, heard or seen about the case they have in their charge. Ms Singh does not have any particularly distinguishing characteristics about her that would differentiate her from any other accused persons being tried in our High Court, and as such there is no reason why potential assessors might remember particularly anything they read or hear about her.

12. Ironically, name suppression can in itself fan the flames of public speculation and bring attention to the case that it would not otherwise attract. It leads to speculation as to the identity of an accused amongst a class of persons of which the accused is a member. For example; if a 26 year old Fijian rugby player is charged with rape and has his name suppressed, then every other 26 year old Fijian rugby player in the nation would unfairly have to jealously defend his innocence.

13. In my view, the suppression order made here by the learned Magistrate was clearly within her reputed powers, but she fell into error by not considering above all the interests of justice, which is the paramount factor.

14. **The order of suppression made below is quashed** and I will be certifying such order to the learned Magistrate pursuant to section 328 of the Criminal Procedure Code.

Paul K. Madigan

Judge

Dated at Suva

27th August, 2009