

**IN THE HIGH COURT OF FIJI**  
**HELD AT LABASA**  
**CRIMINAL JURISDICTION**

**Criminal Case No. HAA 013 of 2009**

**Between:**            **SUSHIL CHAND**  
                                  **(f/n Jai Ram)**

**Appellant**

**And:**                 **THE STATE**

**Respondent**

Hearing date:        10 September 2009

Judgment date:     15 September 2009

(handed down)

Mr A. Sen for the Appellant

Mr. M. Korovou for the State

**JUDGMENT**

1.     On the 10 September 2000, I allowed this appeal and quashed the conviction, ordering that the fine of \$100 be returned to the appellant. I then said I would hand down my reasons at a later date and these are in fact my reasons.

2.     On the 1<sup>st</sup> September 2008 the appellant was convicted in the Labasa Magistrate's Court of failing to comply with Public Service Vehicle Permit

contrary to section 62(2)(4) and 114 of the Land Transport Act 1998 and the particulars of the offence were:

“Sunil Chand on 2<sup>nd</sup> day of February 2008 at Labasa in Northern Division being the driver of a public service vehicle registered no. LT 5791 along Naseakula Road did fail to comply with Public Service Vehicle Permit by operating in front of R B Patel Supermarket and plying hire from Naseakula Road when its base was at S.Khan shop, Tabia”.

3. The appellant submits, in essence that the prosecution case did not prove the ‘actus reus’ of the offence. He submits that even though there is a short taxi stand in front of the R B Patel supermarket, there are a large number of other spaces for goods vehicles and for private cars and there was indeed no evidence before the Court that the appellant was parked in the spaces reserved for urban taxis.

4. The learned Magistrate found that the appellant, being the owner of the rural taxi, was not using his vehicle as a taxi that day but was bringing his wife and son to town for personal reasons. He nevertheless convicted him of the offence on the basis that he was offending against the Labasa Town Council Regulations by “using” a rural taxi in the urban area.

5. Learned counsel for the Prosecution quite fairly and properly conceded that the conviction was not sustainable – there being no proof of the **actus reus** and there being no charge of offending against the Labasa Town Council Regulations.

6. The appeal is allowed, the conviction quashed and the fine returned to the appellant.

**Paul K. Madigan**

Judge

Dated at Labasa.

15 September, 2009