

IN THE MAGISTRATE'S COURT of Fiji
AT SUVA

Criminal Case No 1562/14

FICAC

-v-

RONAL KUMAR

RULING ON NO CASE TO ANSWER

1] The accused in this case is charged with three counts under the Electoral Decree 2014. The charges are as follows;

COUNT ONE

OFFENCES IN RELATION TO BALLOT PAPERS: Contrary to Section 139(2) of the Electoral Decree No. 11 of 2014.

Particulars of Offence

RONAL KUMAR on the 3rd day of September 2014 at Suva in the Central Division marked a vote by circling the number 279 on the ballot paper that was issued to one Satya Wati Ram.

COUNT TWO

UNDUE INFLUENCE: Contrary to Section 141 of the Electoral Decree No. 11 of 2014.

Particulars of Offence

RONAL KUMAR on the 3rd day of September 2014 at Suva in the Central Division interfered with the free exercise of a political right of one Satya Wati Ram.

COUNT THREE

UNDUE INFLUENCE: Contrary to Section 141 of the Electoral Decree No. 11 of 2014.

Particulars of Offence

RONAL KUMAR on the 3rd day of September 2014 at Suva in the Central Division interfered with the free exercise of a political right of one Jai Ram.

2] At the conclusion of the prosecution case the defence made an application under sec. 178 of the Criminal Procedure Decree to acquit the accused without calling the defence. Sec 178 reads as follows;

If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused.

To require the accused to make his defence the court should satisfy that the prosecution has made out a sufficient case. The test applied in this application is well settled. In *State v Ratu Inoke Takiveikata*, Justice Goundar said:

"The phrase "no evidence" has been interpreted to mean that there is no evidence on an essential element of the charged offence (Sisa Kalisoqo v State Criminal Appeal No. 52 of 1984). If there is some evidence on the essential elements of the charged offence, the application for a no case to answer cannot succeed. The credibility, reliability and weight are matters for the assessors and not for the trial judge to consider at a no case to answer stage."

In *State v Balekivuya* [2011] FJHC 833; HAC 095.2010S (22 July 2011) Salesi Temo J held

"It is well settled that, the test at this stage of the trial is whether or not there is some relevant and admissible evidence, direct or circumstantial, touching on all elements of the charge, the weight and credibility of such evidence not being matters for assessment: The State v George Shiu Raj & Another, Criminal Appeal No. AAU 0081 of 2005, Fiji Court of Appeal; The State v Brian Singh, Criminal Appeal No. AAU 0097 of 2005, Fiji Court of appeal, Sisa Kalisoqo v Reginam, Criminal Appeal No. 52 of 1984, Fiji Court of Appeal and State v Anesh Ram, Criminal Case No. HAC 124 of 2008S, High Court, Suva."

Accordingly I shall now consider whether the prosecution has satisfied this test.

3] Sec 139(2) of the Electoral Decree provides that

Except as otherwise expressly authorised by this Decree, any person (other than the voter to whom the ballot paper has been lawfully issued) who marks a vote or makes any other mark on the ballot paper of a voter, commits an

offence and shall be liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 10 years, or to both.

Under this provision any person other than the voter to whom the ballot paper has been issued is penalized for marking a ballot paper except in circumstances where it is specifically authorized by the provisions of this decree

4] Sec 141 of the Electoral Decree 2014 provides that any person who hinders or interferes with the free exercise or performance by any other person, of any political right or duty that is relevant to an election commits an offence and shall be liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 10 years, or to both.

Interference in any manner with the free exercise or performance by any other person of any political right of another person is an offence under this provision.

5] PW3 who is a manager of the DHL Express delivery service said that they entered into an agreement with the election office to deliver the postal vote ballot papers to the voters. He confirmed that the accused who was employed by DHL delivered the postal vote ballot papers to the two main witnesses of this case namely Satya Wati and Jai Ram. Satya Wati PW2 said that the accused came to their home to deliver the ballot papers on 3.9.2014. The accused after delivering the ballot papers had asked to whom you want to vote? Then PW2 had asked who the best person is. The accused then had identified a candidate and asked to mark the vote for them. The complainants had never sought the assistance from the accused to mark the vote. The accused marked their vote for a candidate. The complainants then requested to leave the ballot papers with them as they wanted to consult their daughter in law.

5] The above mentioned evidence clearly touches all the elements of the offences against the accused. It also should be noted that this is not the stage to testify the credibility of the witnesses. Therefore this court is of the view that the prosecution has made out a case that sufficiently requires making a defence by the accused.

28 days to appeal


PRIYANTHA LIYANAGE

RESIDENT MAGISTRATE, SUVA



24/10/2016