

ACT NO. 37 OF 1998

I assent.

[L.S.]

K. K. T. MARA
President

[17 September 1998]

AN ACT

TO AMEND THE CRIMINAL PROCEDURE CODE.

ENACTED by the Parliament of the Fiji Islands—

Short title

1. This Act may be cited as the Criminal Procedure Code (Amendment) Act 1998.

Interpretation

2. In this Act, “principal Act” means the Criminal Procedure Code (Cap.21).

Bail in certain cases

3. Section 108 of the principal Act is amended—

(a) by repealing subsection (3) and substituting—

“(3) All grants or refusals of bail and all orders, conditions or limitations made or imposed under this section are appealable to the High Court upon the application either of the person granted or refused bail or of the Director of Public Prosecutions.”;

(b) by adding the following new subsection—

“(4) The High Court may—

- (a) in its original jurisdiction grant or refuse bail upon such terms as it considers just;
- (b) on an appeal under subsection (3) confirm, reverse or vary the decision appealed from.”.

Manner of recording evidence before magistrate

4. Section 190 of the principal Act is amended by repealing subsection (1) and substituting—

“(1) In inquiries and trials by or before a magistrate the proceedings, including the evidence of the witnesses, are to be recorded as follows—

- (a) If there is available the means by which the proceedings, including the evidence, can be contemporaneously recorded and reproduced in written form by a device which will provide a transcript of the proceedings as nearly contemporaneously as is possible, the proceedings are to be recorded in that manner;
- (b) If a device as described in paragraph (a) is not available—
 - (i) the evidence of each witness, or so much of it as the magistrate considers material, is to be taken down in writing in English by the magistrate, or in the presence and hearing and under the personal direction and superintendence of the magistrate, and when signed by the magistrate will form part of the record;
 - (ii) evidence taken down by a magistrate under subparagraph (i) is normally to be taken down not in the form of questions and answers but in the form of a narrative, except that the magistrate may, in his or her discretion, take down or cause to be taken down any particular question and answer;
 - (iii) a summary of any application or submission by or on behalf of a party to the proceedings on the law, evidence and facts must be noted by the magistrate and included in the record.”.

New section 192A inserted.

5. The principal Act is amended by inserting after section 192 the following new section—

"Admission of facts

192A. (1) An accused person or his or her legal practitioner may in any criminal proceedings admit any fact or any element of an offence, and such an admission will constitute sufficient proof of that fact or element.

(2) Every admission made under this section is to be in writing and signed—

(a) by the person making the admission or by his or her legal practitioner; and

(b) by the judge or magistrate."

Replacement of Section 202

6. Section 202 of the principal Act is repealed and replaced by—

"Adjournment

202. (1) During the hearing of any case, the magistrate must not normally allow any adjournment other than from day to day consecutively until the trial has reached its conclusion, unless for good cause, which is to be stated in the record.

(2) For the purpose of subsection (1) good cause includes, but is not limited to, the reasonably excusable absence of a party or witness or of a party's legal practitioner.

(3) An adjournment under subsection (1) must be to a time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective legal practitioners then present.

(4) During the adjournment of a case under subsection (1), the magistrate may permit the accused person to go at large, may commit the accused to prison, or may release the accused upon his or her entering into a bond, with or without sureties at the discretion of the magistrate, conditioned for his or her appearance at the time and place to which the hearing or further hearing is adjourned.

(5) If the accused person has been committed to prison during an adjournment the adjournment must not be for more than 15 days.

(6) If a case is adjourned, the magistrate may not dismiss it for want of prosecution and must, before adjudicating on the case, allow the prosecution to call its evidence or to offer no evidence on the day fixed for the adjourned hearing.

- (7) A case must not be adjourned to a date later than 12 months after the summons was served on the accused unless the magistrate, for good cause, which is to be stated in the record, considers such an adjournment to be required in the interests of justice.”

Replacement of section 244

7. Section 244 of the principal Act is repealed and replaced by—

“Transmission of records

244 (1) In the event of a committal for trial—

- (a) it shall be the duty of the committing magistrate to ensure that all documents or things which have been put in evidence, including the written charge, the transcript or records of the proceedings, the statement of the accused, the depositions and the bail bonds, are transmitted to the Chief Registrar within 28 days of the order of committal; and
- (b) an authenticated copy of the statement of the accused and of the depositions must be supplied to the Director of Public Prosecutions by the Chief Registrar.
- (2) The Chief Registrar has power to give directions for transmission of the records mentioned in subsection (1) even if there has been a failure to comply with that subsection.”

Appeal to High Court

8. Section 308 of the principal Act is amended by inserting after subsection (5) the following new subsections—

- “(6) An order granting or refusing bail, including any condition or limitation attached to the grant of bail, may be the subject of an appeal to the High Court, either by the person granted or refused bail or by the Director of Public Prosecutions.
- (7) Without limiting the categories of sentence or order which may be appealed against, an appeal may be brought under this section in respect of a sentence or order which includes an order for compensation, restitution, forfeiture, disqualification, costs, binding over, absolute or conditional discharge, probation or community service.
- (8) An order by a court in a case may be the subject of an appeal to the High Court, whether or not the court has proceeded to a conviction in the case.”

Limitation of appeal on plea of guilty and in petty cases

9. Section 309 of the principal Act is amended—

- (a) in subsection (1) by inserting “appropriateness,” after “extent”;
- (b) by repealing subsections (2) and (3).

Replacement of section 312

10. Section 312 of the principal Act is repealed and replaced by—

“Petition to be forwarded to the High Court

- 312. (1) Upon receiving a petition of appeal, the magistrate against whose order, sentence, ruling or decision the appeal is brought must ensure that the petition of appeal, together with the record of the proceedings in the magistrates court is forwarded to the Chief Registrar of the High Court within 28 days.
- (2) The Chief Registrar may give directions for transmission of the appeal records mentioned in subsection (1) even if there has been a failure to comply with that subsection.”.

Replacement of “recognizance” by “bond”

11. Wherever in the principal Act “recognizance” or its plural is used, it is to be replaced by “bond” or its plural.

Passed by the House of Representatives this 13th day of August, 1998.

Passed by the Senate this 7th day of September, 1998.