

**FIJI COURT OF APPEAL**

**APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 10 OF 1977**

**BETWEEN :** **THE COMMISSIONER OF INLAND REVENUE**

**PLAINTIFF**

**AND :** **SHIU CHARAN f/n SITA RAM**

**DEFENDANT**

**JUDGMENT**

On the 3<sup>rd</sup> January 1977 at Suva Magistrates Court the respondent through counsel entered a plea of guilty on two counts of failing to deliver particulars as required by the Commissioner of Inland Revenue contrary to Regulation 20A of the Income Tax Act 1974 and on the 10<sup>th</sup> January 1977 after the respondent had delivered the necessary particulars he was fined ten cents a day for a period of six months on Count 1 and again on Count 2 making a total fine of \$36.

The trial Magistrate quite rightly limited the period during which a daily fine could be imposed to six months as although the offences are continuing ones they fall within the ambit of section 209 of the Criminal Procedure Code which limits the time for summary trials. (The authority for this may be found in **R v Mohammed H Kingston** (Suva Criminal Appeal No 88 of 1972), the offences in question falling within the second category referred to therein).

The appellant has appealed on the ground that the sentence is manifestly lenient having regard to the nature and circumstances of the offence and relies inter alia on **A G v Hari Chand** 1968 14 F L R 245.

Whether or not a sentence is manifestly excessive or inadequate turns upon all the circumstances of the particular case and the judgment in **A-G v Hari Chand** does not lay down any general principle. In that case which involved a failure to comply with a demand by the Commissioner.

Income Tax Ordinance (now repealed) and in respect of which a maximum fine of \$40 a day could be imposed, the accused was fined a daily amount which totalled only \$10.20 cents. On appeal this was increased to an amount totalling \$53.00 the appellate court commenting specifically on the fact that the accused had not offered any reason to account for his failure.

In the circumstances of the case the subject of this appeal, the penalty is limited to \$10 a day and the respondent did give reasons to account for his failure namely that it was the duty of one of his employees to deliver the particulars in time which employee had committed a criminal offence and fled. While this does not constitute a defence under the proviso to section 92 of the Income Tax Act as the employee was a person acting on behalf of the respondent it is a matter that the trial magistrate was entitled to and obviously did take into account in mitigation.

There are no grounds for interfering with the sentence and the appeal is dismissed

**CLIFFORD H GRANT**  
**CHIEF JUSTICE**

**Suva**  
**11<sup>th</sup> March 1977**