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IN THE SUPREME COURT
OF PAPUA NEW GUINEA

CORAM: Saldanha, J.
Wednesday,
23rd April, 1975.

LAHUI TAU v. JOSEPH TALINGAN

Appeal 160 of 1974 (P)

1975
23 Apr.
PORT MORESBY
Saldanha, J.

The appellant, Lahui Tau, was convicted by a magistrate of the Local Court at Kwikila of the offence of passing a valueless cheque contrary to s.22A of the Police Offences Act. He was fined $20.00 and ordered to pay $6.00 compensation or two months' imprisonment in default.

He appeals against both conviction and sentence on the following grounds -

(1) that a plea of guilty should not have been entered

(2) that the sentence was manifestly excessive.

The prosecution alleged that the appellant obtained some goods from the barman of the Rigo Country Club at Kwikila and gave a cheque for $6.00 in payment, which cheque was not paid on presentation to the bank upon which it was drawn.

When charged the appellant said: "I thought I had some money in the bank". The trial magistrate entered a plea of guilty and convicted him.

S.22A of the Police Offences Act provides -

"A person who obtains any chattel, money or valuable security by passing a cheque which is not paid on presentation, or who passes any such cheque in payment or part-payment for services rendered or to be rendered to himself or to any other person,

> or partly in such payment or part-payment and partly for some other purpose, shall, notwithstanding that there may have been some funds to the credit of the account on which the cheque was drawn at the time it was passed be guilty of an offence, unless he proves -
>
> (a) that he had reasonable grounds for believing that the cheque would be paid in full on presentation; and
>
> (b) that he had no intent to defraud"

If the appellant could have proved that he had reasonable grounds for believing that the cheque would be paid and that he had no intent to defraud he would have had a complete defence to his charge. The burden of establishing this defence would be upon the appellant.

In view of what the appellant said in answer to the charge the trial magistrate erred in recording a plea of guilty. He should have entered a plea of not guilty and heard the evidence.

Counsel for the respondent has no objection to the conviction being quashed and the sentence set aside. I therefore quash the conviction, set aside the sentence, and order a re-trial. As there is some apprehension in the mind of counsel for the appellant that in the event of a re-trial the same error might occur again I order that the case be heard by a magistrate in the nearest District Court having jurisdiction.

I have set aside the sentence because I have quashed the conviction but the sentence was far from being excessive.

Solicitor for the Respondent: B.W. Kidu, Crown Solicitor.

Solicitor for the Appellant : N.H. Pratt, A/Public Solicitor.