



PRESS RELEASE (No. 7 of 2022)

STATEMENT BY THE DIRECTOR OF PUBLIC PROSECUTIONS IN RESPONSE TO ALLEGATIONS MADE BY THE POLICE COMMISSIONER ON THE DECISION OF THE DPP NOT TO CHARGE BIMAN PRASAD

On 8th November 2022, the Office of the Director of Public Prosecutions (ODPP) issued a statement that Professor Biman Prasad would not be charged with two counts of indecently annoying a female. That decision was made following a comprehensive review of the evidence in the police docket and any available defences. In short, it had been decided that there was insufficient reliable and credible evidence in the docket for a reasonable prospect of conviction were the matter to proceed to court.

The Police Commissioner last night (9.11.22) held a media conference in which he made a number of allegations about that decision and he sought to impugn my office and me personally by suggesting that the decision not to charge Professor Prasad was made for political reasons.

The Police Commissioner is mistaken about a number of key aspects of the criminal justice system in Fiji and does not appear to understand the respective roles of the police and the ODPP in the criminal justice system.

I therefore wish to clarify the decision-making process and address publicly some of the concerns the Police Commissioner has about this case.

First, the role of the police is to investigate complaints received from members of the public. They take statements from the complainant and any other witnesses and use their discretion as to whether they will charge a suspect after they have interviewed them. Sometimes they will refer the matter to the ODPP for advice but most times they will make their own decision and file a charge.

The role of the ODPP is to act as gatekeeper to the criminal justice system to ensure that only those cases with a sufficient evidential basis to secure a conviction proceed to court. This is particularly the case with matters involving difficult areas of the law or in sensitive or high-profile matters.

Often, on request by the police, we will advise the police as to what charges should be laid, if any, or whether the matter should be further investigated.

When a police docket comes into the ODPP, it is allocated to a legal officer who reviews the evidence and writes a legal opinion. This opinion is then vetted by a manager before the recommendations come up to me as the Director of Public Prosecutions (DPP) for final decision.

Often, defence lawyers will write to us making representations on the evidence, which we also consider before making a decision. We deal with defence lawyers' representations on a daily basis. All criminal defence lawyers at some time will have made written representations to the ODPP. This has been the practice at the ODPP for the past 50 years and is the usual procedure in most common law ODPPs in the world.

Professor Prasad's case was handled in the same way.

At his press conference, the Police Commissioner suggested that the ordinary Rajesh or Pauliasi would not be given the opportunity by the DPP to make representations to the ODPP. This is factually incorrect. Even when suspects or accused persons are not legally represented, we will respond to their representations by immediately calling for the police file to review the charges. The Police Commissioner will be able to confirm the number of times in a week those requests are made.

In the present case, the Director Summary Prosecutions for the Fiji Police brought the file to the ODPP for an opinion and he was advised to submit the docket formally to the ODPP so that a due and proper assessment could be conducted.

The file was then allocated to a legal officer in the usual way to write a legal opinion. Around the same time, my office received a letter of representation from AK Lawyers, Professor Prasad's law firm. The letter was forwarded to the legal officer to consider along with the evidence from the police file. The legal opinion was then vetted by the manager and the recommendations not to charge were forwarded to me for decision.

I read the legal opinion, the recommendations from the manager, and the representations in the defence lawyer's letter. The legal officer and the manager had considered all of the evidence including the credibility of the complainant and how her evidence would come out under cross-examination.

I agreed with the two legal officers that the evidence the police had obtained did not meet the evidentiary threshold and therefore would not be likely to result in a conviction.

Contrary to what the Police Commissioner stated, the ODPP did not seek representations from Professor Prasad's lawyers. The representations were sent to me by letter as is the standard practice amongst criminal defence lawyers.

Also mistakenly, the Police Commissioner seems to think it appropriate for me to consult the complainant but this is not the way the system works. Her evidence was already contained in the police file. It is not appropriate to contact the complainant in these circumstances and the only time we would contact the complainant would be at a witness conference and with a police officer after charges have been filed.

Therefore, considering the evidence and any available defences, the decision was made to direct the police not to file charges and this was communicated to the Director Summary Prosecutions, as well as formally in writing to the police.

Later in the day I was surprised to receive a call from the Police Commissioner in a very agitated state. He told me that I had to charge and could not understand why I would not and accused me of making a decision to favour NGOs or some other miscellaneous human rights groups.

I spent considerable time attempting to explain my reasoning to him and why the charges would not succeed. We cannot ethically file charges in court that are unlikely to succeed due to the lack of evidence on one or more of the essential elements of the offence. It is not our role to throw anything at the court for the court to decide. It is incumbent upon the ODPP to analyse the evidence carefully so that the courts are not burdened by cases that do not meet the evidential threshold for a reasonable prospect of conviction. This is the standard test in every comparable jurisdiction.

There was nothing irregular in the way in which this matter was handled. The police acted appropriately by investigating the complaint and obtaining statements. They cautioned the suspect and made a decision to grant him bail to appear in court pending finalisation of the charges.

The ODPP, likewise, handled the matter in the usual way respecting the appropriate protocols. At no time was the evidence assessed with regard to politics or the status of the suspect. It is quite extraordinary that the Police Commissioner should make such allegations unsupported by any evidence.

I categorically reject the unsubstantiated and defamatory allegations made by the Police Commissioner that the decision not to charge was made other than on the sufficiency of evidence.

The ODPP are the legal advisors to the police. It is not good enough for the Police Commissioner to conduct what can only be regarded as a self-serving trial-by-media where he cuts and pastes parts of the police file for the benefit of the media. What does he hope to gain from this extraordinary display of petulance? This is not a personal matter for me. It is a matter of professionalism.

The questions for the Police Commissioner now are:

- i. why, given the high-profile nature of the case, did the Police Commissioner not send the file in the usual way to the ODPP for advice and instead bypass the ODPP and make unhelpful and prejudicial statements to the media by linking the present case to another unrelated case? and

- ii. if the Police Commissioner is not prepared to take legal advice from the ODPP whose role it is to provide legal advice to the police, from whom did he take legal advice?

Unless the Police Commissioner is able to satisfactorily answer these questions it is difficult to know how the public can have any confidence in the Police Commissioner to deal with these matters properly.

The public can however be assured that the ODPP will not file cases in court just for the sake of it or to please someone or to send a message.

We will only ever file charges in court that meet our stringent evidential threshold test and on that the public can be assured.

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10th November 2022