

**NOTE: PUBLICATION OF NAME OR IDENTIFYING PARTICULARS, OF  
COMPLAINANT PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE  
ACT 1985.**

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 44/2014  
[2014] NZSC 109**

BETWEEN PRAVIN FIA HAVI PRASAD KUMAR  
Applicant

AND THE QUEEN  
Respondent

Court: Elias CJ, Glazebrook and Arnold JJ

Counsel: R M Lithgow QC for Applicant  
S K Barr for Respondent

Judgment: 12 August 2014

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1] The applicant, Mr Kumar, was convicted of one count of wilfully attempting to pervert the course of justice following a Judge alone trial before Venning J.<sup>1</sup> He was sentenced to a term of imprisonment of three years. He appealed, unsuccessfully, to the Court of Appeal<sup>2</sup> and now seeks leave to appeal to this Court.

[2] The background is that Mr Kumar was convicted in October 2009 of counts of kidnapping, indecent assault and sexual violation by rape in respect of a young

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<sup>1</sup> *R v Kumar* [2012] NZHC 1912 [*Kumar* (HC)].

<sup>2</sup> *Kumar v R* [2014] NZCA 116.

woman, L. He was sentenced to preventive detention. In March 2010, he filed an appeal against his convictions and sentence.

[3] In June 2011, before his appeal had been heard and at a time when he had the assistance of counsel and a private investigator, he managed to obtain L's telephone number and contacted her by telephone from prison on three occasions. In the process, he circumvented the usual warning that the recipient of a call from a prison inmate would receive. At Mr Kumar's rape trial, the Crown had called evidence from a psychiatrist, Dr Pillai, about L's mental condition. When he contacted L, Mr Kumar said he was Dr Singh and was assisting Dr Pillai. In the telephone calls Mr Kumar questioned L about the circumstances of the rape.

[4] At his trial before Venning J Mr Kumar gave evidence that he was simply attempting to get at the truth. Venning J accepted that if Mr Kumar was simply intending to get at the truth, that would be a defence to the charge, unless Mr Kumar used unlawful or improper means to do so.<sup>3</sup>

[5] Mr Kumar seeks leave to appeal against his conviction to this Court. Mr Lithgow QC describes the essence of the appeal as being "that it is lawful to attempt to persuade a witness to reconsider their evidence" and that is all that Mr Kumar did.

[6] However, Venning J found that Mr Kumar was not a credible or convincing witness.<sup>4</sup> He concluded that Mr Kumar was intending to place pressure on L with regard to her evidence about the incident.<sup>5</sup> He rejected Mr Kumar's explanation that he was simply making enquiries to attempt to establish the truth of what occurred and that his objective was no more than to have L tell the truth.<sup>6</sup> The Judge said that he was satisfied beyond reasonable doubt that Mr Kumar had telephoned L with the intention of having her change or withdraw her evidence for the purposes of his appeal or any retrial.<sup>7</sup> The Judge went on to say that, even if he had some doubt about this and Mr Kumar was doing no more than seeking to have L tell the truth, he

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<sup>3</sup> *Kumar* (HC) at [10].

<sup>4</sup> At [42].

<sup>5</sup> At [41].

<sup>6</sup> At [46]–[47].

<sup>7</sup> At [48].

would not have a defence as the means he had utilised in the process were “entirely improper”.<sup>8</sup>

[7] In light of the Judge’s factual findings, specifically, his rejection of Mr Kumar’s explanation that he was simply attempting to have L tell the truth, we do not consider that it is necessary in the interests of justice that we hear and determine this appeal. It does not raise any issue of general or public importance, nor do we see any risk of a substantial miscarriage of justice.

[8] We should emphasise that we have declined leave on the basis of the Judge’s factual findings. We express no view on the question whether, if Mr Kumar had been intending simply to persuade L to tell the truth, he must necessarily have been convicted if he used improper means to do so.

Solicitors:  
Crown Law Office, Wellington for Respondent

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<sup>8</sup> At [49].