

IN THE SUPREME COURT OF NEW ZEALAND

SC 9/2012  
[2015] NZSC 190

BETWEEN RAGHU SRINIVAS  
ARYASOMAYAJULA  
Applicant

AND THE QUEEN  
Respondent

Court: William Young, Arnold and O'Regan JJ

Counsel: Applicant in person  
I R Murray for Respondent

Judgment: 16 December 2015

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JUDGMENT OF THE COURT

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**The application for leave to withdraw the notice of abandonment of the application for leave to appeal is dismissed.**

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REASONS

[1] The applicant was convicted after a Judge-alone trial before Judge Wade of two counts of dishonestly using documents contrary to s 240(1)(c) of the Crimes Act 1961.<sup>1</sup> He was sentenced to a term of imprisonment of four years and six months.<sup>2</sup> His appeal against conviction and sentence was dismissed by the Court of Appeal.<sup>3</sup>

[2] On 2 February 2012, the applicant filed a notice of application for leave to appeal to this Court. However, at some time in March 2012 a notice of abandonment of the application for leave to appeal was filed and this Court formally dismissed the application for leave to appeal on 27 March 2012.

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<sup>1</sup> *R v Aryasomayajula* DC Auckland CRI-2009-004-020929, 9 November 2010.

<sup>2</sup> *R v Aryasomayajula* DC Auckland CRI-2009-004-020929, 3 February 2011.

<sup>3</sup> *Aryasomayajula v R* [2011] NZCA 633 (Harrison, Fogarty and Simon France JJ).

[3] On 29 September 2015, some three and a half years after the abandonment, the applicant filed an application for leave to withdraw the notice of abandonment. This judgment deals with that application.

[4] In his submissions in support of the application, the applicant says that he withdrew his application for leave to appeal because he was advised by an inmate (whose name he does not remember) that there would be further implications if he were to proceed with the appeal. He says he perceived this communication from the inmate as “a passive form of communication from the sources which led to use an Indian Immigrant for real estate legislation changes in New Zealand”. The essence of this appears to be that the applicant says he was coerced into withdrawing his appeal. Without any detail as to who coerced him and on whose behalf that person was acting, it is difficult to give any meaningful evaluation to the allegations. However, rather than dismissing the application to withdraw the abandonment on this basis alone, we will consider the grounds on which the applicant says he would pursue his application for leave to appeal if permitted to withdraw his abandonment.

[5] The principal witness against the applicant was a co-offender who had pleaded guilty and then testified against the applicant. Although the grounds are not entirely clear, the proposed grounds of appeal appear to be that the co-offender and another informant, Ms Rutherford, committed perjury, that other witnesses associated with banks which were the victims of the offences gave colluded evidence, that witnesses from the real estate firm for whom the applicant previously worked gave colluded evidence to “cover their own end for bringing in real estate law changes in the country in 2008” and that there was a conspiracy of these witnesses and others to implicate him. He also suggests that his counsel did not make an application under s 347 of the Crimes Act when they ought to have done so.

[6] The allegations made by the applicant are unsubstantiated and extravagant, and it is notable that they were not raised in his appeal to the Court of Appeal. There is nothing in any of the allegations which raises a point of general or public importance and we see no risk of a miscarriage if leave is not granted in respect of those allegations.

[7] For completeness, we will consider whether leave should be given on any of the grounds that were in issue in the Court of Appeal, even though the applicant has not indicated an intention to seek leave to pursue them in this Court.

[8] The applicant's appeal to the Court of Appeal (at which time he was represented by counsel) raised the following grounds:

- (a) That one of the charges was duplicitous because it contained a number of what were effectively separate charges all within the one count. The Court of Appeal dismissed this on the basis that the way the case was conducted and the documents produced to the trial Judge clearly identified the separate allegations made against the applicant and there was no risk that the trial had miscarried as a result of the framing of the count;<sup>4</sup>
- (b) The Judge failed to act on his warning against reliance on the co-offender's evidence. The Court considered that this allegation was not made out and commented that the evidence available corroborating the co-offender's account of the applicant's participation in the offending was "overwhelming";<sup>5</sup>
- (c) There were inadequate findings of fact in the judgment before the Judge's conclusion that the counts were proved. The Court of Appeal evaluated the Judge's reasons and concluded that they indicated that the Judge was satisfied of the essential elements of both counts;<sup>6</sup>
- (d) The Judge failed to accept a defence of claim of right. The Court of Appeal concluded that there was no viable claim of right.<sup>7</sup>

[9] We record that we do not see any of these points as meeting the criteria for leave for a further appeal to this Court.

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<sup>4</sup> *Aryasomayajula v R*, above n 3, at [23]–[31].

<sup>5</sup> At [34]–[37].

<sup>6</sup> At [39].

<sup>7</sup> At [42].

[10] The applicant does not give an adequate reason justifying the grant of leave to withdraw his notice of abandonment of his application for leave to appeal. In any event, even if we were to grant leave to withdraw the notice of abandonment and consider the application for leave to appeal on its merits, we would not grant leave to appeal. In these circumstances the application for leave to withdraw the notice of abandonment of the application for leave to appeal is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent