

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 87/2023
[2024] NZSC 78

BETWEEN RICHARD RAJESH KUMAR
Applicant
AND THE KING
Respondent

Court: Ellen France, Williams and Miller JJ
Counsel: Applicant in person
K E Hogan for Respondent
Judgment: 24 July 2024

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] Mr Kumar was convicted after trial of charges of theft in a special relationship in respect of two events which are referred to as Event 11 and Event 12.¹ He was sentenced to three months' community detention, 100 hours' community work and ordered to pay \$10,165 in reparation.² Mr Kumar's appeal to the Court of Appeal against conviction on the two charges was unsuccessful.³ He now seeks leave to appeal to this Court.

¹ Crimes Act 1961, s 220(1)(a). He was acquitted of another charge of using a document under s 228 of the Crimes Act. That charge also related to Event 12.

² *Prasad v R* [2019] NZDC 19350 at [59].

³ *Chand v R* [2023] NZCA 276 (Brown, Mallon and Downs JJ) [CA judgment].

Background

The factual narrative

[2] Mr Kumar was one of a number of persons charged and convicted in relation to applications for, and receipt of, grants from gaming machine proceeds by a number of interconnected clubs in South Auckland. The clubs included Shree Sanatan Dharam Pratinidhi Sabha Manukau Branch Inc (Manukau Sanatan). Event 11 related to a grant of \$30,000 paid by Four Winds Foundation Ltd (Four Winds) to Manukau Sanatan on 1 November 2012. Event 12 related to a grant of a little over \$30,000 paid by Infinity Foundation Ltd (Infinity) to Manukau Sanatan on 14 November 2012.

[3] The evidence forming the basis of the case against Mr Kumar is set out in some detail in the Court of Appeal judgment.⁴ In essence, the Crown case in relation to Event 11 was that, in the context of obtaining grant funding, an inflated quote was obtained from The Rock Factory Ltd for items such as staging and that a refund of the over-payment to The Rock Factory Ltd was subsequently falsely treated as a donation. The over-payment was not repaid to Manukau Sanatan but to a soccer club, New Zealand Fiji Association Sanatan Football Club Inc (NZ Fiji Football).⁵ Similarly, in relation to Event 12, the Crown said the relevant quote from Boom Boom Fireworks Ltd was inflated in order to obtain grant funding for fireworks in excess of what was required. Again, the Crown said that the refund for services not provided was falsely treated as a donation.

The offence provision in issue

[4] The two charges concerned alleged offences under s 220(1)(a) of the Crimes Act 1961. Section 220 relevantly provides as follows:

220 Theft by person in special relationship

- (1) This section applies to any person who has received or is in possession of, or has control over, any property on terms or in circumstances that the person knows require the person—

⁴ At [84]–[102].

⁵ New Zealand Fiji Association Sanatan Football Club Inc was struck off the Incorporated Societies Register on 18 January 2011.

- (a) to account to any other person for the property, or for any proceeds arising from the property; or ...
- (2) Every one to whom subsection (1) applies commits theft who intentionally fails to account to the other person as so required or intentionally deals with the property, or any proceeds of the property, otherwise than in accordance with those requirements.
- ...
- (4) For the purposes of subsection (1), it is a question of law whether the circumstances required any person to account or to act in accordance with any requirements.

[5] The Court of Appeal said that in this case subs (1)(a) required the Crown to prove the following elements:⁶

- (a) Mr Kumar had control of the grant funds from Four Winds/Infinity;
- (b) Mr Kumar was subject to an obligation to account to Four Winds/Infinity for those funds;
- (c) Mr Kumar knew of that obligation; and
- (d) Mr Kumar intentionally dealt with those funds in a manner that he knew and intended to be in breach of that obligation.

The leave application

[6] The first part of the leave application (Mr Kumar is representing himself) would have this Court consider matters canvassed in the Court of Appeal judgment. These matters include Mr Kumar's submission that he was not involved in Manukau Sanatan's finances; did not know what the relevant accounting obligations were; acted at the direction of one of the co-defendants; the donations were legitimate; and that one of the Crown witnesses who gave evidence against him was not necessarily reliable.

[7] There are then a number of matters which are raised for the first time in this Court relating to, amongst other matters, the failure to sever his trial from that of the co-defendants; that Mr Kumar wanted to represent himself at trial but a legal aid lawyer was forced upon him; that he wanted to give evidence in his own defence but

⁶ CA judgment, above n 3, at [80].

was not permitted to do so; that his conviction has resulted in adverse consequences; and that the reparation order made against him is unfair and he cannot meet it.

[8] The submissions from the respondent summarise the three themes of Mr Kumar's application in this way:

- (a) Mr Kumar is innocent of the offending that he was convicted of.
- (b) Mr Kumar suffered unfairness at trial through:
 - (i) prosecution charging decisions; and
 - (ii) lack of severance; and
 - (iii) prosecution adduction of unreliable evidence; and
 - (iv) his legal representation.
- (c) The outcome for him was unjust because:
 - (i) as a respectable member of the community, he should not have been convicted; and
 - (ii) he cannot afford the reparation order made against him.

[9] In terms of the outcome, Mr Kumar refers to, among other things, the impacts on his taxi licence renewal and ability to obtain a real estate licence.

Our assessment

[10] To the extent that the proposed appeal would have this Court re-visit arguments raised in the Court of Appeal, no issues of general or public importance arise.⁷ Rather, the focus of this part of the proposed appeal is essentially directed to whether there was a basis in the facts for the guilty verdicts.

[11] To put the issues in context, one of the key issues at trial was the nature of the payments back. As defence counsel for Mr Kumar put it in closing:

What is at the centre of the dispute, however, is the nature of those payments back to NZ Fiji Football. The Crown says they were refunds which needed to be paid back to the respective foundations. The defence says they were donations, separate transactions for which no accounting was required.

[12] In addition, as defence counsel at trial pointed out, assuming the Crown was correct and the payments were refunds, it did not automatically follow that Mr Kumar

⁷ Senior Courts Act 2016, s 74(2)(a).

was guilty. It was still necessary for the Crown to prove that Mr Kumar had control of the grant money, that there were circumstances requiring him to account for it, that he was aware of those circumstances, and that he deliberately failed to account for the money. Mr Kumar raised various matters in his defence on these topics.

[13] The Court of Appeal worked through the elements of the offences and the evidential basis for the verdicts reached is discussed in some detail in the judgment.⁸ We need only highlight the Court's reference to the following factual matters: Mr Kumar was present at the relevant meeting of Manukau Sanatan and it was agreed at the meeting that he "would collate" the relevant papers and lodge them with the Funders; his involvement with Manukau Sanatan was significant including obtaining quotes from service providers for other events and the nature of that involvement was confirmed in Mr Kumar's interview with Te Tari Taiwhenua | the Department of Internal Affairs; there was evidence he personally dictated the relevant invoice for the Rock Factory Ltd and the agreement with the Rock Factory Ltd that the refund would be received by way of a donation was with him; and there was similar evidence to support the relevant elements concerning the funding relating to Boom Boom Fireworks Ltd.

[14] Nothing raised by Mr Kumar gives rise to any appearance of a miscarriage of justice in the Court of Appeal's assessment, based on the evidence to which the Court refers, that the verdicts were not unreasonable.⁹

[15] As to the matters now raised for the first time in the leave application to this Court, we see the argument based on lack of severance as having insufficient prospects of success to warrant a grant of leave. It would not be appropriate for this Court to address the other matters such as the complaint relating to trial counsel and what is described as a denial of Mr Kumar's right to self-representation and to give evidence. Those matters should have been raised in the Court of Appeal. Mr Kumar was represented by counsel in the Court of Appeal and no evidential foundation from counsel in that Court has been provided as to what advice, if any, Mr Kumar received on these new matters in the context of the appeal to the Court of Appeal.

⁸ CA judgment, above n 3, at [111]–[132].

⁹ Senior Courts Act, s 74(2)(b).

[16] The criteria for leave are not met.

Result

[17] The application for leave to appeal is dismissed.

Solicitors:

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent