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Principal Registrar & Chief Executive Officer

Form 107 (Version 3)
UCPR 51.45, 59.4

SUMMONS (SUPERVISORY JURISDICTION)

COURT DETAILS	
Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	2023/00167419
TITLE OF PROCEEDINGS	
[First] applicant	**Sreenivasa Mukherjee Yenuga**
#Second applicant #Number of applicants (if more than two)	
[First] respondent [active respondent- not decision-maker]	**Attorney General of New South Wales**
Second respondent	**Supreme Court of New South Wales**
#PROCEEDINGS IN THE COURT BELOW	
Title below	Yenuga v Attorney General of New South Wales
Court [Tribunal or other decision-maker] below	Supreme Court of New South Wales
Case [or file] number below	2020/233492
Date[s] of hearing	On the Papers
Material date	
Decision of	Button J
FILING DETAILS	
Filed for	**Sreenivasa Mukherjee Yenuga**
#Filed in relation to	The whole of the decision in File No: 2020/233492 [include only if form to be eFiled]

HEARING DETAILS

This summons is listed for directions at [time, date and place to be inserted by the registry unless otherwise known].

Next Listing Date 19Jun2023 09:00 AM - Directions (Supervisory Jurisdiction)

TYPE OF CLAIM

[Select type of claim from the list available on the UCPR website at www.ucprforms.nsw.gov.au by clicking on the link to Publications, or at any NSW court registry.]

ORDERS SOUGHT

1 The applicant urges the Honourable Court to issue a Writ of Certiorari and any other Writs or Orders to quash the Decision dated 23 February 2023 passed by Supreme Court under Sections 78 & 79 of the Crimes (Appeal and Review) Act 2001 as the decision fell into jurisdictional error and other errors of law on the face of the record; and

2 The applicant urges the Honourable Court to declare the errors of law on the part of appellate court constitute an aspect of the proceedings which may form the basis of doubt or question as to evidence and circumstances having the potential to reverse the conviction due to miscarriage of justice, for the purpose of considering an application for an inquiry or referral to the Court of Criminal Appeal under Ss 78 & 79(2) of the Crimes (Appeal and Review) Act 2001 (NSW); and

3 The applicant urges the Honourable Court to award costs incurred by the applicant if the applicant could not reach an agreement with the respondents; and

4 Any other Order or Orders that are deemed fit in the interests of justice.

DETAILS OF DECISION

1 The decision maker was the Supreme Court acting under S 78 of the Crimes (Appeal and Review) Act 2001 (NSW).

2 The applicant seeks relief from the whole of the decision below.

GROUNDS

1 [State briefly but specifically the grounds on which the relief is sought: r 59.4(c).]

2 The 2nd respondent fell into jurisdictional error of the kind mentioned in R v Connell: Ex parte The Hetton Bellbird Collieries Ltd (1944) 69 CLR 407 (no reasonable correlation between evidence and conviction due to consideration of irrelevant facts) for not keeping an open mind for achieving impartiality in decision making that caused to take into account irrelevant facts for decision making under Ss 78 & 79 of the Crimes (Appeal and Review) Act 2002. The observation of the 2nd respondent is untrue with regards to non-submission of relevant documents as the applicant placed sufficient evidence on record, which includes transcript of Local Court containing chief and cross examination of witnesses. Further, Ss 78 & 79 of the Crimes (Appeal and Review) Act 2001 lay emphasis on 'evidence' and 'mitigating circumstances' but not 'transcripts.'

3 The 2nd respondent fell into jurisdictional error of the kind stated in Kioa v West (1985) 159 CLR 550 (failed to follow due process of law) for not bringing to the applicant's attention the critical issue or factor on which the Supreme Court is likely to turn so that the applicant may have an opportunity of dealing with it when there is information asymmetry between the respondent and the applicant due to lack of procedural rules and guidance for applications under S 78 of the Crimes (Appeal and Review) Act 2002.

4 The 2nd respondent fell into jurisdictional error of the kind observed in Minister for Immigration and Citizenship v SZMDS (S193-2009) [2010] HCA 16 as rational and logical conclusions cannot flow from limited extracts in annexures submitted by the applicant. The 2nd respondent's decision is based on 'no evidence' for the reason that learned justice relied on the information submitted in the application which lacks probative value when removed from the full evidence.

5 The 2nd respondent fell into jurisdictional error of the kind stated in Craig v South Australia [1995] HCA 58 (misunderstood the scope of the statutory function and then asked wrong questions) for altering the findings of the District Court. The 2nd respondent misunderstood the screening function under Ss 78 & 79, which is a quasi-judicial function, and is not empowered with the functions of an appellate court to alter the findings of the District Court. The statutory satisfaction is restricted to either 'doubt as to guilt' or 'refusal' only. If a fact or principle was dealt with incorrectly by the District Court and requires correction, it must be done by a body empowered with the functions of the appellate court.

6 The 2nd respondent fell into jurisdictional error of the kind stated in Minister for Immigration & Citizenship v Li (2013) 249 CLR 332 (lacked inevitable and intelligible justification) for failure to take into account that the decision of the District Court was a product of personal biases of the applicant's solicitor. Before the District Court, the applicant's solicitor pre-empted the proceedings by voluntarily offering personal opinions to the Court on the discrepancies in the evidence as 'minor' and 'the facts are capable of satisfying the ingredients of the alleged offences.' As per the Rule 17.3 of Uniform Conduct, Practice and CPD Rules for Solicitors 215, a solicitor must not make submissions or express views to a Court on any material evidence or issue in the case in terms which convey or appear to convey the solicitor's personal opinion on the merits of that evidence or issue. It is an unethical conduct on the part of the solicitor as per the law of NSW. Despite that, the 2nd respondent supported the conviction with reasons that lacked inevitable and intelligible justification. The appellate court wrongly identified issues which were supposed to be identified from rehearing the evidence as per S 18(1) of Crimes (Appeal and Review) Act 2001, S 190 of the Evidence Act on non-agreeable parts of evidence by the parties, and the principles elaborated in The Queen v M [1994] HCA 63 and Morris v R [1987] HCA 50. To put it another way, the District Court fell into jurisdictional error by wrongly transferring the discretion of the court to the applicant's solicitor. At the least, the unlawful act of the solicitor should deserve a declaration of unlawfulness as decided in Project Blue Sky v Australian Broadcasting Authority (S41-1997) [1998] HCA 28.

7 The 2nd respondent fell into jurisdictional error of the kind laid out in Minister for Immigration and Multicultural Affairs v Yusuf [2001] HCA 30 for failure to take into account that the District Court (and Local Court) did not make sufficient findings of facts which is a condition precedent under S 133(2) of the Criminal Procedure Act read with S 28 (2) of Crimes (Appeal and Review) Act 2001 before making a decision under S 20(1) of Crimes (Appeal and Review) Act 2001. Not making findings of fact is another jurisdictional error of the District Court. There were many material inconsistencies in the evidence that were overridden with a single stroke of

pen. To state the error in the words of R v Sheppard 2002 SCC 26 (persuasive value), "There was no resolution of conflicts. There were significant inconsistencies or conflicts in the evidence. The trial judge's reasons were so "generic" as to be no reasons at all. The absence of reasons prevented the Court of Appeal from properly reviewing the correctness of the unknown, unexpressed pathway taken by the trial judge in reaching his conclusion and from properly assessing whether he had properly addressed the principal issues in the case. The trial judge's failure to deliver meaningful reasons for his decision was an error of law."

8 The 2nd respondent fell into jurisdictional error of the kind mentioned in Minister for Immigration and Multicultural Affairs v Yusuf [2001] HCA 30 for failure to consider that conviction cannot be according to law due to presence of prejudicial facts in the evidence. The District Court (and Local Court) took prejudicial evidence into account which ought to have been mandatorily excluded being irrelevant facts for the exercise of power by virtue of mandatory S 137 of the Evidence Act 1995, more particularly, when assessments of credibility and reliability are excluded from purview of S 137 in IMM v The Queen [2016] HCA 14. It is a jurisdictional error on the part of District Court too when the speculations listed in the annexure submitted by the applicant satisfy the tests laid out in DSJ v The Queen; NS v The Queen 2 [2012] NSWCCA 9 and in ALRC 26, vol 1 para 644 by the Australian Law Reform Commission. At the least, Supreme Court ought to have considered along the lines stated in In Re H and Others (Minors) (A.P) (Respondents) 1996 that "it means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established".

9 The 2nd respondent fell into jurisdictional error of the kind stated in FTZK v Minister for Immigration and Border Immigration [201] HCA 27, that is, reasonable correlation between evidence and conviction cannot exist when there is no logical pathway. The 2nd respondent endorsed the reasons provided by the District Court are perfectly adequate, when the reasons of the District Court (and Local Court) did not show the pathway to conviction as the evidence was dealt in branches without establishing any meaningful connection between them (R v Fleig, 2014 ABCA 97 (CanLII), paras 28, 36, & 37 [persuasive value]).

10 The 2nd respondent fell into jurisdictional error of the kind in Minister for Immigration & Citizenship v Li (2013) 249 CLR 332 (lacked inevitable and intelligible justification) for baldly denying the case of the applicant as not a case of 'word against word' and for tacitly approving the action of the District Court (and Local Court) in not taking Liberato direction into consideration, which is a condition precedent for exercising its jurisdiction under S 133(3) of Criminal Procedure Act read with read with S 28 (2) of Crimes (Appeal and Review) Act 2001, particularly, when the case was primarily decided on the basis of credibility of the witnesses and when the errors were present as pointed out in Fox v Perry (2003) 214 CLR 118 and Devries v Australian national Railways Commission 177 CLR 472.

11 The 2nd respondent fell into jurisdictional error of the kind mentioned in Craig v South Australia [1995] HCA 58 (misunderstood the scope of the statutory function and failed to logically accumulate related evidence which resulted in non-consideration of exculpatory facts required for the statutory satisfaction) for altering the findings of the District Court on the understanding ability of Telugu language by child witness to salvage the District Court's finding that suffered from fallacy of disjunct facts. In the process, the 2nd respondent committed further errors of law on the face of the record by ignoring the principles stated in Chamberlain v The Queen (No2) [1984] HCA 7, Smith v The Queen [2001] HCA 50, Velevski v The Queen

[2002] HCA 4, Aytugrul v The Queen [2012] HCA 15, and R. v. Munoz 86 O.R. (3d) 134 (persuasive value).

12 The 2nd respondent fell into jurisdictional error of the kind mentioned in FTZK v Minister for Immigration and Border Immigration [201] HCA 27 (reasonable correlation between evidence and conviction failed due to illogical circular reasoning) for drawing inferences from collateral and lawful facts other than facts in issue by applying illogical circular reasoning and by taking judicial notice of stereotype behaviours, which is another error of law as per Her Majesty the Queen and ARJD 2017 ABCA 237 [persuasive value].

13 S 7(c) of Crimes (domestic and Personal Violence) Act 2007 offends the Constitutional integrity of the Courts as decided in Kable v Director of Public Prosecutions (NSW) [1996] HCA 24 because of the broad coverage of the section, the respondents proved the lawful acts as criminal acts in the first place (as there cannot be any protest against them), caricatured those lawful acts as perfect circumstances for unlawful acts (in applicant's case, anger and other acts were used as circumstances for proving intimidation and assault), and then forced the applicant to defend himself on lawful acts as conjectures, improbability, speculations, and other applicable defences. The logical correlation between unlawful & dangerousness conduct and the fear that used to exist in traditional assault and intimidation offences had been dangerously diluted by instilling irrelevant lawful conduct into the total fact mix. Any conduct that touched the borderline of unlawfulness & dangerousness regardless of the risk had been illogically correlated to fear. If correlation between criminal conduct and fear is lowered to unreasonable levels, then establishing factual and legal causation requirement would become a farcical exercise, and, as a result, any accusation of prosecution would literally guarantee a criminal record. Further, proving guilty of lawful and unlawful acts without having a mechanism for differentiation destroys any possible doubt that may arise from lawful acts. The process of mixing lawful and unlawful facts without distinguishing them reduces the proof beyond reasonable doubt to a ridiculing level of standard of proof arising because there would not be an opportunity for conflicts in the evidence. In other words, the facts that are capable of causing doubt due to mixing of lawful and unlawful acts become incapable of causing doubt and proving beyond reasonable doubt by the courts is a mockery of the court's integrity as a fact finder. There should be check-posts on what conduct constitutes an offence under the statute.

14 The 2nd respondent fell into error of law on the face of record in not recognising the developments on the principle of double jeopardy, originally laid out in Blockburger v US 284 U.S 299 (1932), and later adopted by Australian High Court in Pearce v The Queen [1998] HCA 57. Later on, Blockburger test has been further expanded in Ashe v. Swenson, 397 US 436 (1970) pg 448 in the following terms:
"Because we conclude today that a lesser included and a greater offense are the same under Blockburger, we need not decide whether the repetition of proof required by the successive prosecutions against Brown would otherwise entitle him to the additional protection offered by Ashe and Nielsen (footnote at page 167). The lesser charge has to be dismissed- US v Teters; Brown v Ohio 1977. It affects indirectly by showing magnified picture of the offences- US v Teters Page 376 and 377. The 2nd respondent ought to have taken the subsequent developments of the principle into account as double jeopardy applies to both convictions and punishments.

#SIGNATURE OF LEGAL REPRESENTATIVE

#This summons does not require a certificate under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014*.

#I under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the applicant[s] that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature	
Capacity	[eg solicitor on record, contact solicitor]
Date of signature	

#SIGNATURE OF OR ON BEHALF OF APPLICANT IF NOT LEGALLY REPRESENTED

I acknowledge that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature	Sreenivasa Mukherjee Yenuga
Capacity	Acting in person
Date of signature	16/05/2023

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the applicant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this summons.

[on separate page]

FURTHER DETAILS ABOUT APPLICANT[S]

[First] applicant

Name	Sreenivasa Mukherjee Yenuga
Address [The filing party must give the party's address.] Postal Address	[redacted]
#Frequent user identifier	[include if the applicant is a registered frequent user]

[repeat the above information as required for the second and each additional applicant]

#Legal representative for applicant[s]

Name	[name of solicitor on record]		
Practising certificate number			
Firm	[name of firm]		
#Contact solicitor	[include name of contact solicitor if different to solicitor on record]		
Address	#[unit/level number]	#[building name]	
	[street number]	[street name]	[street type]
	[suburb/city]	[state/territory]	[postcode]
DX address			
Telephone			
Fax			
Email			
Electronic service address	[#email address for electronic service eg service@emailaddress.com.au #Not applicable]		

#Contact details for applicant[s] acting in person or by authorised officer

#Name of authorised officer	Acting in Person
#Capacity to act for applicant[s]	
Address for service [The filing party must give an address for service. This must be an address in NSW unless the exceptions listed in UCPR 4.5(3) apply. State "as above" if the filing party's address for service is the same as the filing party's address stated above.]	As above
#Telephone	[redacted]
#Fax	

#Email [redacted]

DETAILS ABOUT RESPONDENT[S]

First respondent

Name	Attorney General of New South Wales
Address	52 Martin Place Sydney NSW 2000 GPO Box 5341 Sydney NSW 2001

[redacted]

Second Respondent

Name	Supreme Court of New South Wales, Court of Appeal
Address	Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Name	GPO Box 3 Sydney NSW 2001 1300 679 272

[repeat the above information as required for the second and each additional respondent]