

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M129 of 2018

ON APPEAL FROM THE SUPREME COURT OF VICTORIA (COURT OF APPEAL)

IN THE MATTER OF:



DIRECTOR OF PUBLIC PROSECUTIONS REFERENCE NO 1 OF 2017

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APPELLANT'S OUTLINE OF ORAL ARGUMENT

Part I: INTERNET PUBLICATION

1. This Outline is in a form suitable for publication on the internet.

Part II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

2. ORIGIN OF PRASAD DIRECTION IN AUSTRALIA

The *Prasad* derives from the *obiter* judgment of King CJ in the South Australian decision of *R v Prasad*.

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King CJ further elaborated on the direction in *R v Pahuja*.

3. RIGHT OF JURY TO ACQUIT AT ANY STAGE AFTER THE CLOSE OF THE CROWN CASE

The reason King CJ gave for recognising that it may be appropriate to give a *Prasad* direction, was a conclusion that the jury, as judges of the facts, had a power to bring in a verdict of not guilty at any time after the close of the prosecution case. However, as recognised in *R v Speechley*, such a right could only ever be exercised upon the invitation of the trial Judge.

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4. EARLY CRITICISMS OF PRASAD DIRECTION

In *R v Falconer-Atlee*, the *Prasad* direction was criticised on the basis that, where a Judge determined that a case should not continue, the Judge should take

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responsibility for stopping the case rather than leaving that responsibility to the jury.

It is accepted that the law in Australia differs from the English position. However, such disapproval of the *Prasad* direction extends well beyond the fact that in England there is a different approach to directed acquittals than exists in Australia.

5. CURRENT CRITICISMS OF PRASAD DIRECTION

In *R v Collins*, eight criticisms were identified (JAB 196 [49]) .

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A further criticism was noted in *R v H(S)* (JAB 246 [50]), namely fairness to victims and witnesses.

In *R v Pahuja* (JAB 279) it was noted that the evidence called by the defence might strengthen the prosecution case and that a partial summing up carried with it a serious departure from the due course of a trial.

Further, the direction cuts across the quintessential fact-finding function of the jury.

6. RELEVANCE OF OTHER HIGH COURT CASES

Although there is no direct High Court authority, the reasoning in *Doney v The Queen*, *R v Baden-Clay* and *IMM v The Queen* is inconsistent with the giving of a *Prasad* direction

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7. THE PRACTICE OF GIVING A PRASAD DIRECTION IS CONTRARY TO LAW.

1. It is contrary to common law.

2. It is contrary to the legislative regime in Victoria, namely the *Criminal Procedure Act 2009*, in particular s.234, the *Jury Directions Act 2015* and the *Juries Act 2000*.

8. PARTICULAR DIFFICULTIES WITH ADMINISTERING PRASAD DIRECTION IN THE CURRENT CASE

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This was a case that required a detailed charge.

This case was primarily about self-defence. The first *Prasad* direction was given, notwithstanding that there had been no account given as to what had happened on the night.

The *Prasad* direction was given prior the Judge ruling on the use that could be made of post offence conduct.

There were 13 jurors in this case, which led to one being balloted off, only to be returned to the panel when the jury wanted to hear more evidence.

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