

**ORDER PROHIBITING PUBLICATION OF NAME(S), ADDRESS(ES),  
OCCUPATION(S) OR IDENTIFYING PARTICULARS OF  
APPELLANT(S)/RESPONDENT(S)/ACCUSED/DEFENDANT(S) PURSUANT  
TO S 200 CRIMINAL PROCEDURE ACT 2011. SEE**

**<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360346.html>**

**NOTE: THE CONFIDENTIALITY OF THE NAME OR IDENTIFYING  
PARTICULARS OF THE APPELLANT AND OF HIS CLAIM OR STATUS  
MUST BE MAINTAINED PURSUANT TO S 151 OF THE IMMIGRATION ACT  
2009. SEE**

**<http://www.legislation.govt.nz/act/public/2009/0051/latest/DLM1440836.html>**

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CRI-2017-004-005092  
[2021] NZHC 1632**

**THE QUEEN**

v

**MOHAMED SAMSUDEEN**

Hearing: 3 July 2018

Appearances: H Steele for the Crown  
D Manning and K Simonsen for Mr Samsudeen

Judgment: 3 July 2018

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**[ORAL] JUDGMENT OF WYLIE J**

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*Solicitors/Counsel:*  
Meredith Connell, Auckland  
Ms Manning, Auckland  
Mr Simonsen, Auckland

*Copy to:*  
Stuff, Auckland  
New Zealand Herald, Auckland

## **Introduction**

[1] Mr Samsudeen has pleaded guilty to five charges, namely:

- (a) using a document for pecuniary advantage (x 2);
- (b) knowingly distributing restricted material (x 2); and
- (c) failing to assist the Police in their exercise of a search power.

[2] Convictions have been entered and Mr Samsudeen is to appear for sentencing on 7 August 2018.

[3] When Mr Samsudeen was re-arraigned and entered his pleas, he applied for interim name suppression through until sentencing. At that stage, I had very little material before me on which to determine that application. I granted interim name suppression and directed that Mr Samsudeen was to file an affidavit in support of his application together with any supporting materials he wished to rely on. I set the matter down for hearing today.

[4] I have now received Mr Samsudeen's affidavit. A copy has also been made available to the Crown.

### **Mr Samsudeen's affidavit**

[5] It is clear from Mr Samsudeen's affidavit that he is concerned that further publication about his case might put him in increased danger *in Sri Lanka in the event that he is deported to that country*.

[6] Mr Samsudeen grew up in Sri Lanka. *He is a Tamil Muslim. He has deposed that he and his father experienced serious problems with the Sri Lankan authorities due to their political background. He says that he has been attacked, kidnapped and tortured, that he went into hiding in response to those incidents, and that he came to New Zealand in 2011 to seek refugee status.*

[7] *Mr Samsudeen was granted refugee status by the Immigration and Protection Tribunal (the Tribunal) on 20 December 2013.*

[8] *Mr Samsudeen was arrested by the Police in May 2017 in relation to the charges then laid against him. Those charges were more serious; in particular it was alleged that he knowingly distributed objectionable material. The material has since been determined not to be objectionable, but rather to be restricted material. As a result, the Crown amended the charge list and that resulted in Mr Samsudeen's pleas.*

[9] *Mr Samsudeen did not initially seek name suppression. There has already been media reporting of the charges he originally faced, in particular by the New Zealand Herald on 18 October 2017 and also by News Hub on the same day.*

[10] *Recently, the Refugee Status Branch has served Mr Samsudeen with a notice of an intention to cancel his refugee status. That notice is dated 31 May 2018. A copy has been made available to me. The notice advises that the Refugee Status Branch intends to cancel Mr Samsudeen's status as a refugee. If that occurs, he will be deported to Sri Lanka.*

[11] *Mr Samsudeen relies on the notice of intention as being a change of circumstances. He states as follows:*

*I'm very afraid of returning to Sri Lanka because I'm afraid of the authorities there and the same risks and fears [that] I had when I left my country are still there in Sri Lanka. Also young Tamil men face many serious problems in Sri Lanka from the authorities. We face arrest, detention, mistreatment and torture as we're always under suspicions by the authorities because of the [Liberation Tigers of Tamil Eelam].*

[12] *Mr Samsudeen is concerned that any further media publication of his case will regenerate attention, and that new material might come to the attention of the Sri Lanka authorities.*

### ***The application***

[13] *I have earlier today made a ruling under s 151 of the Immigration Act 2009 prohibiting the publication of the fact of Mr Samsudeen's status as a refugee and also*

*of the particulars relating to his claim to be a refugee. That order was expressed to be interim until sentencing.*

[14] Ms Manning, appearing on Mr Samsudeen's behalf, sought a further order prohibiting publication of Mr Samsudeen's name and identifying particulars, including his nationality, under s 200 of the Criminal Procedure Act 2011 (the CPA) through until Mr Samsudeen's sentencing. *In the course of discussions with Ms Manning, it became clear that what she in fact seeks is an order prohibiting publication of Mr Samsudeen's name and identifying particulars through until Mr Samsudeen's refugee status is ultimately determined.*

[15] The Crown do not wish to be heard on the issue.

[16] I did hear from both Mr Livingstone and Mr Hurley, respectively from Stuff and the New Zealand Herald. Mr Hurley spoke of the principles of open justice, the fact that Mr Samsudeen's name has already been published, and that there is said to be high public interest in this case.

### **Analysis**

[17] The application is made under s 200(2)(e) of the CPA. Relevantly, the section provides that the Court may make an order prohibiting publication of the name, address or occupation of a person who is convicted of an offence. *Inter alia*, the Court may make an order if it is satisfied that publication would be likely to endanger the safety of any person.

[18] The Court must be satisfied that publication would be likely to result in one or more of the consequences listed in s 200(2). The word "likely" is a common sense test which is readily understood and applied. It is enough that there is an appreciable risk that publication of information could lead to the identification of the person seeking name suppression and to one of the statutory consequences. The risk must not be fanciful. The test has been described as being – is there a real and appreciable possibility that cannot be ignored as remote.<sup>1</sup>

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<sup>1</sup> *D (CA443/2015) v Police* [2015] NZCA 541 at [30](a).

[19] I am satisfied that that test is made out in this case, notwithstanding that the risk is in many respects conditional. I have taken into account the following.

[20] *First, Mr Samsudeen was recognised as a refugee in the decision of the Tribunal dated 20 December 2013. The Tribunal found that Mr Samsudeen had a well-founded fear of facing serious harm if he was returned to Sri Lanka, owing to the risk of violence by paramilitary groups aligned with enemies of his family. The Tribunal accepted that Mr Samsudeen had been attacked, abducted, physically mistreated and humiliated in the past.*

[21] *Secondly, the Refugee Status Branch has acknowledged in its notice of intention that the fact of the objectionable material charges (in fact now restricted material charges) may lead authorities in Sri Lanka to undertake their own investigations, which may in turn lead them to material on Mr Samsudeen's social media accounts. That material might be taken as indicating that Mr Samsudeen has advocated violence and holds militant Islamist views.*

[22] Thirdly, there is material which has been made available to me by Ms Manning, including the United States Country Report on Human Right Practices in Sri Lanka. That report relates to practices in 2016. There is another more recent Report of the Special Rapporteur on Minority Issues in Sri Lanka which is dated 31 January 2017, and a Human Rights Watch Report released in 2018. All express concerns about human rights abuses in Sri Lanka.

[23] Fourthly, I accept the submission made that any material published will be readily available on the internet and that it could come to the attention of the authorities in Sri Lanka.

[24] In the event that Mr Samsudeen's name and identifying particulars are published, I accept on the materials before me that there is a real and appreciable possibility that, *in the event Mr Samsudeen's refugee status is revoked and he is deported to Sri Lanka*, his safety could be in danger.

[25] Accordingly, I grant Mr Samsudeen further name suppression.

[26] I make an order prohibiting publication of his name, address and occupation, as well as his identifying particulars, pursuant to s 200 of the CPA. *This order is to remain in place until Mr Samsudeen's status as a refugee is finally determined.*

[27] In this regard, I record Ms Manning's undertaking to advise this Court by memorandum *as soon as that final determination is made.* In addition, I direct that Ms Manning is to make a copy of her memorandum available to relevant members of the news media, namely Mr Livingstone from Stuff at [tommy.livingstone@stuff.co.nz](mailto:tommy.livingstone@stuff.co.nz) and Mr Hurley at the New Zealand Herald at [sam.hurley@nzherald.co.nz](mailto:sam.hurley@nzherald.co.nz). The Court will then reconvene to determine whether or not the name suppression order should be made permanent.

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Wylie J