

MOSHEN AGHABIGGI

v

THE QUEEN

Court: Tipping, McGrath and Anderson JJ

Counsel: R Glover for Appellant  
P K Feltham for Crown

Judgment: 17 April 2007

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**JUDGMENT OF THE COURT**

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**The application for rehearing of the application for leave to appeal is dismissed.**

**REASONS**

[1] The appellant's application for leave to appeal was dismissed on 5 October 2006. He has filed an application for rehearing of that application. We have no need to consider whether this court has power to grant a rehearing in these circumstances as we are satisfied no case for a rehearing has been made out.

[2] The application for rehearing is made on the basis that the appellant did not have the assistance of counsel when preparing his submissions in support of the application for leave to appeal. The ground upon which the appellant sought and now seeks leave is that the refusal by the trial Judge to permit one of the

complainants to be recalled has or may have led to a substantial miscarriage of justice. This ground was argued in the Court of Appeal. Following perusal of the trial transcript it became clear that it had been accepted at trial that further cross-examination of the complainant concerned was unnecessary. The trial Judge therefore made no ruling on the point and specifically no ruling refusing to allow the complainant to be recalled.

[3] In the Court of Appeal counsel for the appellant accepted that his trial counsel had not pursued the application for recall and that the point should be treated as abandoned. It is clear therefore that there is no proper basis for the appellant to seek leave to raise the point in this court. No ground for granting leave has been shown and, all other issues aside, the application for rehearing must therefore be dismissed.

[4] The court notes the appellant's assertion of what will happen to him if he is deported but also notes the assurance given by Crown counsel in paragraph 15 of the respondent's submissions in that respect.

Solicitors:  
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