IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA449/2019
[2023] NZCA 276

BETWEEN	PRADEEP CHAND Appellant
AND	THE KING Respondent

CA452/2019

BETWEEN	RICHARD KUMAR Appellant
AND	THE KING Respondent

CA459/2019

BETWEEN	RAKESH CHAND Appellant
AND	THE KING Respondent

CA460/2019

BETWEEN	VIJENDRA PRASAD Appellant
AND	THE KING Respondent

Hearing:	25 and 27 October 2022 (further memoranda received 23 November 2022)
Court:	Brown, Mallon and Downs JJ
Counsel:	R M Mansfield KC for Pradeep Chand, Rakesh Chand and Vijendra Prasad H M S Cheeseman for Richard Kumar K E Hogan for Respondent
Judgment:	3 July 2023 at 3 pm

JUDGMENT OF THE COURT

A The Crown's application to dismiss Pradeep Chand's appeal for want of prosecution is declined. An extension to appeal out of time is granted. Pradeep Chand's application to adduce further evidence is declined. Pradeep Chand's conviction appeal is dismissed. His sentence appeal is also dismissed.

B Richard Kumar's conviction appeal is dismissed.

C Rakesh Chand's application for leave to adduce further evidence is declined. His conviction appeal is dismissed.

D Vijendra Prasad's application for leave to adduce further evidence is dismissed. His conviction appeal is dismissed. His sentence appeal is also dismissed.

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REASONS OF THE COURT

(Given by Mallon J)

Introduction

[1] The appellants, along with others, stood trial before Judge Moala and a jury in the Manukau District Court on fraud charges. Those charges arose out of applications for grants from gaming machine proceeds made by four incorporated societies associated with the appellants. There were 11 charges of theft by a person in a special relationship (the s 220 charges).[1] These related to the misuse, or fraudulent accounting, of the grants received. There were five charges of using a document

[1] Crimes Act 1961, s 220.

dishonestly (the s 228 charges).[2] These related to false documents that were submitted in applying for grants. There were also two charges of obstructing a gambling inspector (the obstruction charges).[3]

[2] Pradeep Chand was convicted of two s 220 charges[4] and one obstruction charge.[5] He was sentenced to two months' home detention on the s 220 charges. He was fined $500 on the obstruction charge.[6] He appeals his conviction on the s 220 charges. He says the evidence did not establish that he had guilty knowledge (that is, the requisite mens rea) to the criminal standard. If the conviction appeal is not successful, he appeals the Judge's decision to decline his application for a discharge without conviction. If that appeal is unsuccessful, he does not appeal the home detention sentence, which he has already served.

[3] Richard Kumar was convicted of two s 220 charges.[7] He was acquitted on a s 228 charge.[8] He was sentenced to three months' community detention, 100 hours community work and ordered to pay $10,165 reparation.[9] He appeals his conviction contending that the Judge erred in concluding that he was in a special relationship with the grantors of the grants and that he had control of the funds, and in not treating his involvement separately from his co-defendants. He says that the Judge misdirected the jury in relation to whether he had control of the relevant funds and the jury's verdict was unreasonable. There is no appeal against his sentence.

[4] Rakesh Chand was convicted of six s 220 charges,[10] two s 228 charges,[11] and one obstruction charge.[12] He was sentenced to eight months' home detention for the ss 220 and 228 convictions and fined $500 on the obstruction conviction.[13] He appeals

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2 Section 228(1)(b).
3 Gambling Act 2003, s 346(1)(d).
4 Charges 3 and 9 in the Crown Charge List.
5 Charge 4 in the Crown Charge List.
6 *R v Prasad* [2019] NZDC 19350 [Sentencing notes] at [73].
7 Charges 16 and 18 in the Crown Charge List.
8 Charge 17 in the Crown Charge List.
9 Sentencing notes, above n 6, at 59.
10 Charges 3, 6, 8, 10, 12 and 15 in the Crown Charge List.
11 Charges 11 and 14 in the Crown Charge List.
12 Charge 5 in the Crown Charge List. He was found not guilty of charge 1, 2 and 7.
13 Sentencing notes, above n 6, at [51].

two of the s 220 convictions[14] and one of the s 228 convictions[15] on the basis of expert handwriting evidence for which he seeks leave to adduce.[16] He says if the appeal against conviction on those charges is successful it would give rise to a miscarriage of justice on the remaining charges. This is because the prosecutor closed to the jury on the basis that it could use propensity reasoning in determining whether the charges were proven. Mr Chand does not appeal his sentence.

[5] Vijendra Prasad was convicted of three s 220 charges.[17] He was sentenced to three months' home detention and ordered to pay reparation of $23,569.75.[18] He appeals his convictions on the same basis as Rakesh Chand. He appeals his sentence on the basis that the Judge erred in not granting his application for a discharge without conviction.

[6] The other defendants were Binesh Pratap, Anup Kumar, Ashok Kumar and Shree Sanatan Dharam Pratanidhi Sabha Manukau Branch Inc (Manukau Sanatan). Manukau Sanatan was convicted and fined $8,000.[19] It does not appeal. The others were found not guilty of the charges they faced.

Factual background

Legislation under which grants made

[7] The Gambling Act 2003 (the Act) regulates the gambling sector. The Act is administered by the Department of Internal Affairs (the DIA). One of the purposes of the Act is to ensure that money from gambling benefits the community.[20] To that end, the Gambling (Class 4 Net Proceeds) Regulations 2004 (the Regulations) provide a grant application system under which applicants apply to licensed corporate societies for a grant of funding.

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14 Charges 6 and 15.
15 Charge 11.
16 Criminal Procedure Act 2011, s 335.
17 Charges 8, 9 and 15.
18 Sentencing notes, above n 6, at [93].
19 At [81].
20 Gambling Act, s 3(g).

[8] Pursuant to the Regulations, a grant application must include supporting documents, including those specifying the reasons for the grant application, the total amount of funding sought and other appropriate information. Where the applicant is not a natural person, the application must be signed by two authorised representatives of the applicant community group.[21] It is a standard condition of receiving a grant that grant money is used only for the specific purpose or purposes for which the application was made and in accordance with any conditions attached.[22] Grant recipients are required to account to the corporate society for the way in which grant funding was spent. If it has not been spent on authorised purposes, it must be refunded to the corporate society.[23]

Grantors

[9] The charges relate to 11 events[24] for which grants were obtained from four licensed corporate societies: Aotearoa Sports Foundation Ltd (Aotearoa Sports), Cuesports Foundation Ltd (Cuesports), Four Winds Foundation Ltd (Four Winds) and Infinity Foundation Ltd (Infinity). Aotearoa Sports, Cuesports, Four Winds and Infinity held licences from the DIA to operate gaming machines, and to collect gaming machines profits and distribute them to the community for authorised purposes.

Grantees

[10] The grant applications were made on behalf of four incorporated societies based in South Auckland: Manukau Sanatan; the New Zealand Fiji Association Sanatan Football Club Inc (NZ Fiji Sanatan AFC); Tavua Cultural & Sports Club Inc (Tavua); and Mangere United Soccer Club Inc (Mangere United).

[11] Manukau Sanatan seeks to preserve, promote and safeguard the religious, social, economic, cultural and educational interests of the Sanatan (Fijian Indian) community in Manukau. Defendants associated with Manukau Sanatan were:

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21 Gambling (Class 4 Net Proceeds) Regulations 2004, reg 17(2)(a).

22 Gambling Act, s 115A.

23 Under reg 12(b) of the Gambling (Class 4 Net Proceeds) Regulations, the license holder must use its best endeavours to obtain the return of money granted if it has information that the recipient has not used the money for the specific purpose for which it was distributed.

24 Referred to as events 1–8 and 10–12 in the Charge List. Charges in relation to event 9 related to other defendants and were not part of the trial.

Pradeep Chand (Patron and President); Rakesh Chand and Anup Kumar (Vice Presidents); Binesh Pratap (Treasurer); and Richard Kumar (a member since 2008 who attended and voted at board meetings, and from time to time was appointed as organising chairman of particular events run by Manukau Sanatan).

[12] NZ Fiji Sanatan AFC sought to encourage and promote the playing of football among members of the Sanatan community in New Zealand and elsewhere. Defendants associated with NZ Fiji Sanatan AFC were: Rakesh Chand (Chairman); Anup Kumar (Secretary and, from time to time, appointed organising chairman of particular events run by NZ Fiji Sanatan AFC); Binesh Pratap (a member since 2008 and Treasurer since 2010); and Vijendra Prasad (Secretary).

[13] Tavua's purpose was to promote and participate in sports and cultural activities, including football tournaments and Diwali festivals. Defendants associated with Tavua were Rakesh Chand (President from its inception and until his resignation in 2013) and Ashok Kumar (Secretary, and subsequently President).

[14] NZ Fiji Sanatan AFC and Tavua were struck off the register of incorporated societies in 2011 and 2014 respectively so no charges were brought against them.

[15] Mangere United, the general object of which was to promote soccer, was the subject of a single s 220 charge which was severed from the other charges.[25]

Pradeep Chand's conviction appeal

Preliminary issues

[16] The Crown submits that Pradeep Chand's appeal should be dismissed for want of prosecution. This is because Mr Chand failed to progress his appeal since filing his appeal on 12 September 2019. In July 2021 he instructed Mr Mansfield KC but still the appeal was not progressed.

[17] Mr Chand was present at the appeal hearing. He had endeavoured to meet with Mr Mansfield shortly before the hearing but had been unable to do so. We adjourned

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[25] *Department of Internal Affairs v Chand* [2017] NZDC 25355.

the hearing to later in the week to enable Mr Mansfield to obtain instructions from him. At the adjourned hearing we heard submissions from Mr Mansfield and from the Crown in respect of his appeal. We also provided Mr Mansfield and the Crown with more time to file further submissions following the hearing if they wished to do so. In the event, neither did so.[26]

[18] We are satisfied it is in the interests of justice to hear Pradeep Chand's appeal despite the significant delay in advancing the appeal. We are satisfied that the Crown was not prejudiced by the delay given the opportunity it was provided to advance further submissions after the hearing. We therefore decline to dismiss the appeal for want of prosecution. We also grant leave to appeal out of time.[27]

Charges

[19] Mr Chand faced and was convicted of the following two s 220 charges:

Charge 3 Theft by a person in a special relationship Section 220 Crimes Act 1961	**CRN 15092505198: Rakesh Chand** **CRN 15092505194: Pradeep Chand** That RAKESH CHAND and PRADEEP CHAND, between 14 May 2009 and 18 December 2009, at Auckland, having received or having control over property, on terms or in circumstances that they knew required them to account to any other person for the property, intentionally failed to so account. **Particulars:** Dealings with $28,000.00 granted by Infinity Foundation to Tavua Cultural Sports Club Incorporated in respect of grant application 303111 as shown by submitting false documents as part of the audit reconciliation for that grant.
Charge 9 Theft by a person in a special relationship Section 220 Crimes Act 1961	**CRN 15092505196: Pradeep Chand** **CRN 16092500049: Shree Sanatan Pratanidhi Dharam Sabha Manukau Branch Incorporated** **CRN 15092505178: Vijendra Prasad** That PRADEEP CHAND, VIJENDRA PRASAD and SHREE SANATAN PRATANIDHI DHARAM SABHA MANUKAU BRANCH INCORPORATED, between 28 October 2010 and 20 August 2011,

[26] The day after the hearing Mr Mansfield refiled his submissions correcting typos. The Crown filed a memorandum on 23 November 2022 advising that it did not wish to place any further information before the Court.

[27] Pradeep Chand's appeal was filed one day out of time.

	at Auckland, having received or having control over property, on terms or in circumstances that they knew required them to account to any other person for the property, intentionally failed to so account. **Particulars:** Dealings with $28,000.00 granted by Infinity Foundation to Tavua Cultural Sports Club Incorporated in respect of grant application 303111 as shown by submitting false documents as part of the audit reconciliation for that grant.

[20] He also faced and was convicted of the following obstruction charge:

Charge 4 Obstructing gambling inspector Section 346(1)(d) Gambling Act 2003	**CRN 15092505193** That PRADEEP CHAND, on or about 29 April 2014, at Auckland, intentionally obstructed or attempted to obstruct a gambling inspector in the execution of his duty. **Particulars:** By asking Bharat Kumar to lie to a gambling inspector, namely Stephanus Leppan.

Crown case: charge 3

[21] Charge 3 related to event 2. It involved an application by Tavua to Infinity. The "main contact person" stated on the application was Rakesh Chand, President.

[22] The application required that two people sign a "Consent to Audit". This consent related to an audit or inspection that the DIA may direct of the books, accounts, or data systems in which the grant monies were deposited. It also required the two people to "certify that the information included in this application together with any supporting details, is true and correct". Rakesh Chand, along with Ashok Kumar (Vice President), signed this Consent to Audit on 30 March 2009.

[23] As stated on the application form, funds were sought for the following purpose:

> The club has organised [an] ethnic world cup soccer tournament and would like to apply for funds to cover the cost of playing gear, prizes and venue hire.

[24] The application was for $49,078.63 which was to cover:

(a) soccer gear and uniforms: $36,858.07;

(b) trophies, prizes and medals: $5,220.56; and

(c) venue hire: $7,000.

[25] The documents filed in support of the application included:[28]

(a) two unsigned itemised quotations for sports gear, one dated 20 February 2009 in the name of "Score Sportswear Ltd" and the other dated 26 February 2009 in the name of "Champs Sports", both totalling $36,858.07;

(b) a University-Mount Wellington Association Football Club quotation dated 6 March 2009 addressed to Tavua for the "hire of Bill McKinlay Park venue for Ethnic World Cup 9th-13th April 2009" for $7,000 plus GST; and

(c) an unsigned itemised quotation dated 25 February 2009 in the name of "Trophies Plus" addressed to "Tavva (sic) Sports & Cultural Club Inc" totalling $5,220.56.

[26] Infinity made a grant of $28,000 which was deposited into Tavua's account on 14 May 2009.

[27] Mr Brooker, an accountant with Markhams, was appointed to audit the grant. There were delays in responding to the audit with Rakesh Chand and then Vijendra Prasad seeking and being granted extensions. When the second extension was not met, Mr Brooker requested the documents by 24 December 2009. On 18 December 2009 Vijendra Prasad provided the documentation relating to the grant.

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[28] Additional supporting documentation were: a flyer for the "Ethnic Soccer World Cup Tournament" at Bill McKinlay Park, Panmure, Auckland on Easter weekend 10th–13th April 2009, with the description "[16] of NZ's best Ethnic teams battle it out for soccer supremacy over two fun-filled weekends" with Bobby Chand named as contact (Rakesh Chand is known as Bobby); a deposit slip for Tavua's bank account; a certificate of incorporation for Tavua; a Tavua resolution to apply for funding for the Ethnic Soccer World Cup Tournament for the amount of $49,078.63 dated 4 March 2009 and signed by Rakesh Chand (President) and Ashok Kumar (Vice President); a Tavua budget of income and expenses dated 30 March 2009 of $54,328.63 approved and signed by Rakesh Chand (President);[28] and a statement for Tavua's cheque account showing a balance of $0 dated 17 April 2009 and faxed to "Sharon" on 14 May 2009 "[as] per your discussion with Rakesh Chand".

[28] The enclosed information included an income and expenditure statement for the $28,000 Infinity grant. This included expenditure on 31 May 2009 of $7,000 to University-Mount Wellington Association Football Club (cheque number 261291)[29] and on 25 September 2009 to Mangere Fashions for $3,555 (cheque number 261296). The Crown alleged that Rakesh Chand and Pradeep Chand controlled this grant and provided false information to Vijendra Prasad for the audit. The case against Rakesh Chand related to the documents provided in support of these two items. The case against Pradeep Chand related only to the Mangere Fashions supporting information.

[29] The information provided in support of the Mangere Fashions' expenditure was: a Mangere Fashions invoice dated 24 April 2009[30] addressed to Tavua in the amount of $3,555 for 40 polos with embroidery, 40 screen-printed shirts and 20 officials' shirts; and a bank statement for the Tavua cheque account showing a cheque payment withdrawal (cheque number 261296) on 28 September 2009 for $3,555. The Crown alleged the Mangere Fashions invoice was dishonestly provided as Mangere Fashions had not in fact supplied the goods specified in the invoice.

[30] The Crown called evidence from Bharat Kumar, the owner of Mangere Fashions. He gave evidence about statements he made to Mr Leppan, senior investigator from the DIA. Mr Leppan asked Mr Kumar about the Mangere Fashions invoice. Mr Kumar said that "Pradeep Chand approached [him] first, to ask if [he] could give them a [quotation] for some uniforms they wanted for Tavua Sports Club". Mr Kumar said he could do that. Pradeep Chand said he would follow it up with his friend, Rakesh Chand, who would come and see Mr Kumar regarding what was needed. The conversation took place in his Māngere shop. A matter of days later Rakesh Chand came to his shop. He gave Mr Chand the invoice and Mr Chand told

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[29] The information provided in support of the University-Mount Wellington payment was: a document on University-Mount Wellington letterhead dated 31 May 2009 recording "[received] from Tavua Sports and Cultural Club. $7,000 for hire of Bill McKinlay Park venue for Ethnic World Cup 9th-13th April 2009[.] R J Douglas[,] President"; and a bank statement for Tavua's cheque account recording a cheque payment (cheque number 261291) on 18 May 2009 for $7,000 with "University-Mount Wellington Association Football" handwritten on the statement. Mr Chaudrey gave evidence that, after providing the quote, he did not hear back from Rakesh Chand. He therefore hired the park out to another group for Easter weekend. He was adamant that the Ethnic Soccer World Cup did not take place over Easter. It was held in March instead.

[30] The date is not entirely clear. It appears to be "4" for April rather than "7" for July.

him he would be coming back to order the uniforms. They did not come back and he did not supply any of the goods referred to in the invoice. No money had changed hands.

[31] Mr Kumar said that Mr Leppan came back to see him a few months later in April 2014. He showed Mr Kumar a bank deposit slip from Mangere Fashions. He asked Mr Leppan to give him some time to look through his bank statements. When he did look at his bank statement, he saw that he had deposited a cheque. He telephoned Pradeep Chand and asked "what's the story on this?". Mr Chand said "[we] gave you a cheque, you banked it and then you gave us a cash cheque back". Mr Kumar said that he had forgotten about this until Mr Leppan came back with the deposit slip and Pradeep Chand confirmed what had happened. He confirmed that he had been given the cheque and he had banked it and after a couple of weeks he refunded the money. He could not remember exactly who gave him the bank cheque but thought it was most probably Rakesh Chand. He gave Tavua a cheque for $3,500. He refunded the money because Tavua said they did not want the goods and because Pradeep Chand was a friend of his for the last 10 years. A phone record confirmed a telephone call between Mr Kumar and Pradeep Chand on 29 April 2014.

[32] Mr Leppan spoke to Mr Kumar again on 1 May 2014. Mr Kumar said that he initially did not remember much but something "clicked" when he called Pradeep Chand and he found the cheque butt. Mr Kumar told Mr Leppan that Pradeep Chand had told him to tell the DIA that he had supplied the goods. Mr Kumar told Pradeep Chand that he could not do that. Pradeep Chand told him it would be bad for the Tavua Sports Club and Manukau Sanatan and would give them a bad name. He told Pradeep Chand that he would not get away with telling Mr Leppan that he had supplied the goods because his goods are unique and nobody else has those goods. Pradeep Chand then said he would send Rakesh Chand to Mr Kumar. The next day Rakesh Chand came to see Mr Kumar and insisted that he tell the DIA that he had supplied the goods. Rakesh Chand kept insisting and so he told Rakesh Chand that he would see what he could do. Rakesh Chand said that they would "look after" him.

[33] Relying on Mr Kumar's evidence, the Crown contended that Pradeep Chand was involved in paying the $3,555 cheque to Mangere Fashions and then recovering

the money back from him. The Crown alleged that Pradeep Chand was jointly liable as a principal with Rakesh Chand or, alternatively, he was a secondary party by assisting Rakesh Chand in obtaining the quote from Mangere Fashions that was fraudulently used in the audit and by facilitating the payment and refund arrangement.

Defence at trial: charge 3

[34] On charge 3, in closing to the jury defence counsel submitted that Pradeep Chand had no control over anything in relation to the grant. He did not sign the application form, he was not an executive member of Tavua, he had no signing authority over the Tavua bank accounts, he had no control over what was to be done with the grant, there was no evidence that he was aware of the terms and conditions of the grant, and he had nothing to do with the reconciliation.

[35] Defence counsel further submitted that Bharat Kumar was an unreliable witness whose evidence should be put to one side. He had accepted in evidence that he had been trying to piece together what could have happened. Initially when Mr Leppan showed Bharat Kumar a cheque number for the amount of $3,555 made out to Mangere Fashions, Bharat Kumar said that he had no knowledge of the cheque and had never received the cheque or any money from Tavua. It was submitted that, when Mr Leppan went back to Bharat Kumar on 29 April 2014 with a deposit slip signed by Bharat Kumar to deposit the cheque into his bank account, Bharat Kumar realised he had got himself in a bind and blamed Pradeep Chand for the trouble he was in. It was submitted that, knowing that Mr Leppan had proof that Mangere Fashions received the money, when Mr Leppan came back on 1 May 2014 to take another formal statement, Bharat Kumar made up a story about Pradeep Chand telling him to give the cash back to him and to tell the DIA that he had supplied the goods.

Crown case: charge 9

[36] Charge 9 related to event 5. It involved an application by Manukau Sanatan to Aotearoa Sports.[31] The "main contact person" stated on the application was Vijendra Prasad, Secretary.

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[31] This was one of two applications made for the Diwali festival. The other application, which is the subject of charge 8, was made by Cuesports and a grant for $20,000 was approved and paid to Manukau Sanatan in late October 2010.

[37] The application form stated the conditions of grant, which included:

> All grant money must be used for the purpose approved within 3 months of the grant being made (or any later date agreed by Aotearoa Sports Foundation in writing).
>
> Copies of invoices, receipts and bank statements must be provided to Aotearoa Sports Foundation within 3 months of the grant being made to verify that the grant has been used in accordance with the purpose approved.
>
> Any grant money which is not spent on the purpose approved must be returned to Aotearoa Sports Foundation within 3 months of the grant being made.

[38] The application form required that two people sign a "consent to audit" and provide a declaration that the information provided in the application form was true and correct. Two representatives signed the consent to audit on 7 October 2010. The names of the signatories were not included in the form. The Crown said the application was signed by Vijendra Prasad and Pradeep Chand.

[39] As stated on the application form, funds were sought for the following purpose:

> To organise an outdoor/indoor cultural show to mark [the Diwali] festival of lights on 31/10/10. An open free entry is accorded to all the people to participate and enjoy the day out and finally end the day with spectacular fireworks, entertainments to kids and the public at large.

[40] The application was for $60,449. Included with the application were quotes from various suppliers. They included a quote for advertisement and radio coverage, including 10 hours of live radio coverage on the day from Apna Networks Ltd (Apna Networks), totalling $19,500.[32]

[41] Aotearoa Sports provided a grant of $20,000, which was deposited into Manukau Sanatan's account on 27 October 2010.

[42] The Diwali festival of lights took place on 31 October 2010.

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[32] The other quotes provided were for: live entertainment (Richard Kumar) for $7,780; TV coverage (NZ TV Productions Ltd) for $4,500; sounds systems (Niks Mobile DJz and Sounds) for $3,800; lighting and power supply for the venue (Krispak Engineering Services Ltd) $8,750; fireworks display (Boom Boom Fireworks) for $11,500; helicopter transport (Helitrans Ltd) for $846.40; and hire of venue (Auckland Catholic Samoan Community) for $2,500 including a bond of $500.

[43] The subsequent required reconciliation for the grant was not forthcoming.[33] Following correspondence from Lloyd Robinson, the chairperson of Aotearoa Sports, Vijendra Prasad provided reconciliation documents on 20 August 2011, some 10 months after the event. The case against Pradeep Chand related in particular to the reconciliation documents for payments purportedly made to Apna Networks. The reconciliation documents included:

(a) A summary document of how the $20,000 grant was allocated.[34] The allocations included a "final payment" to Apna Networks of $5,409.75 made on "13/01/2010" with cheque number 86.

(b) A document on Apna Networks' letterhead addressed to Manukau Sanatan dated 5 November 2010, described as a receipt, with a handwritten notation of "CHQ 59 & 86", and recording two items: a "deposit paid to Apna … for live coverage for Diwali 2010" of $2,500 on 10 October 2010; and "Full and Final Payment for advertising and live Radio coverage" of $5,469.75 on 30 October 2010.

(c) A bank statement for Manukau Sanatan for the period 10-17 January 2011 recording a withdrawal of $5,409.75. The type was recorded as "CQ", with a reference of "000086". The particulars for the withdrawal were handwritten as "Apna Networks Ltd".

[44] In addition to the reconciliation documents, the documentary evidence before the jury included:

(a) The cheque butt for cheque 59: with a date of 19 October 2010, a description "National Bank Repayment Loan" and an amount of $2,500.

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33 This was also the position for the Cuesports grant for the same festival (event 4).

34 The allocations were: 3/11/2010, cheque number 65, Niks Mobile DJZ & Sounds, $1,100; 3/11/2010, cheque number 74, Niks Mobile DJZ & Sounds, $1,100 (described as the "[final] payment for sounds"; 13/01/2010, cheque number 86, Apna Networks Ltd, $5,409.75 (described as the "final payment"); 1/11/2010, cheque number 66, Boom Boom Fireworks Ltd, $4,500; and 2/11/2010, cheque number 62, Richard Kumar, $7,780. These amounts totalled $19,889.75 and the summary document showed a refund of $110.25.

(b) A corresponding Manukau Sanatan cheque (59) dated 19 October 2010 for $2,500 made out to National Bank dated 19 October 2010.

(c) The cheque butt for cheque 86: with a crossed out (and therefore illegible) date, a partially illegible description referring to a "payment" to "Pradeep" comprising amounts of $3,089 (noted as for "8 Reagan") and $2,710 (noted as what appears to be "Bill paid")[35] totalling $5,799, less $389.25 (noted as for "Ins"), totalling $5,409.75.

(d) A corresponding Manukau Sanatan cash cheque (86) for $5,409.75 made out to "P Chand" dated 12 January 2011.

(e) The cheque butt for cheque 50: with the date 16 November 2010, a description "Withdrawal 5175 Deposit National Acc. Paid To →", and an amount of $5,175.

(f) A corresponding Manukau Sanatan cash cheque (50) for $5,175 dated 16 November 2010 with a notation on the back of "Ashwin Pratap".

(g) A further Manukau Sanatan cash cheque (75) for $5,175 dated 9 November 2010 with a notation on the back indicating it was cashed by Pradeep Chand.

[45] The Crown called evidence from Samiula Sharief, the accountant for Apna Networks since 2003. He gave evidence that Apna Networks is a Hindi radio station that runs 24 hours, seven days a week. In May 2014 Mr Leppan came to the office and met Mr Shah, the owner of Apna Networks. Mr Leppan provided Mr Shah with some documents to look through. Mr Shah gave Mr Sharief the documents to check whether Apna Networks had ever received the amount shown in the documents. Mr Sharief checked the bank statement and receipts. He found no record of the payment. Mr Sharief contacted Mr Leppan and advised him that the receipt that totalled $7,969.75 (referred to at [43(b)] above) was a quotation and not a receipt, and

[35] This is not clearly legible.

that Apna Networks had not received that amount. He also told Mr Leppan that the radio station had donated radio coverage services for the event.

[46] The Crown also relied on Mr Leppan's interview of Pradeep Chand on 2 July 2014. Pradeep Chand admitted that he signed the application form for the grant from Aotearoa Sports. He accepted he was involved in planning for the Diwali event and was at a meeting of Manukau Sanatan (the minutes show he chaired the meeting) held on 3 October 2020 when it was agreed to seek funding for this from charitable organisations.[36]

[47] Pradeep Chand was asked specifically about his involvement in the audit for the grant. He said the treasurer and the secretary must have provided the audit documents. He was asked about the Apna Networks receipt. He initially said he did not know who obtained and received the receipt. But then, having noted there was a fax number on it, he said the secretary would have received it. He accepted he knew about the receipt because it was presented at a meeting he attended.

[48] He was asked about the document setting out what the grant was spent on. He said he did not compile the document and did not know who had. He was referred to the bank statement showing a payment to Apna Networks. He said he could not remember if he was involved in that but, if he was present at the meeting, then he would have seen it.

[49] He was asked about cheque number 86. He said that, if it was the one where Apna Networks gave a donation, then they gave the money back. Pradeep Chand was asked if he signed the cheque. He said:

> Yeah, but on the butt like in this case, I think in one of the cases, I think the cheque was to Apna like because Apna gave back that cheque to us, like didn't take it, they gave it back in donation and that money was cashed by us and put in the … I think we paid for something else. But that was donation from … we took it as a donation from Apna. Understand?

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[36] Pradeep Chand said that this was a big event and other groups were involved in it too. It was an all-day event, involving food stalls and cultural items, that finished at night with a big fireworks display. He said that Phil Goff (Mayor), ministers, the leader of the opposition, members of Parliament and a huge crowd were in attendance.

[50] It was put to him that the "receipt" document stated that $5,469.75 was paid to Apna Networks as a "final payment" and, if it was not paid to Apna Networks, then the document was not true. Pradeep Chand said he thought that Manukau Sanatan should have given the cheque to Apna Networks and should have then taken another cheque from Apna Networks for the donation. It was put to him that the documentation was a false representation of what happened. Pradeep Chand said "I don't think … I don't know whether it is false or not but from my understanding …".

[51] Pradeep Chand was asked about the cheque made out to himself. He said it "must be a repayment of some money that I had put in with the organisation, … paying for things … and then I get it back". He said the organisation wrote a cheque that was supposed to go to Apna Networks, but Apna Networks said take it as a donation, so it was paid into his account for money that he was owed.

[52] The Crown case relied on Pradeep Chand's admissions that he was involved in the planning for the event, that he knew about the audit, and that he had cashed the cheque relied on in the reconciliation as evidence of payment to Apna Networks because Apna Networks was donating its services. The Crown case also relied on the evidence from Mr Sherief that Apna Networks did not receive the money.

Defence at trial: charge 9

[53] On charge 9, in closing to the jury, defence counsel noted that Pradeep Chand was only a patron for Manukau Sanatan (that is, somebody who provided financial support and was a role model to the organisation). It was submitted that he had no involvement in accounting for the grant from Aotearoa Sports and could not be held responsible for any mistakes that were made in the reconciliation documents about which he had no knowledge.

[54] It was submitted that Pradeep Chand's comments when interviewed by the DIA were not admissions and reflected his clouded memory of what had happened four years earlier. It was submitted that his comments about the Apna Networks receipt being done wrongly resulted from suggestions made by Mr Leppan and that Pradeep Chand firmly believed that the Apna Networks receipt was genuine. It was submitted that the receipt was a receipt and Mr Sharief was wrong about it being a

quotation. It was submitted that cheque number 86 had nothing to do with the Diwali festival and that Pradeep Chand had been making mortgage repayments from his own pocket and was later reimbursed from Manukau Sanatan's funds. It was also noted that the amount of $5,469.75 in the receipt and the amount on the cheque were different by $60. It was submitted that whoever did the cross-referencing for the reconciliation made a mistake and it had nothing to do with Pradeep Chand.

Assessment

[55] On appeal, Pradeep Chand again submits that he had nothing to do with the reference to cheque 86 on the reconciliation document that purported to be the reference for the payment to Apna Networks. He says cheque 86 was a legitimate payment as part of Manukau Sanatan's repayments to him for the purpose of a property at 8 Reagan Road, Papatoetoe. He seeks to provide further support for his defence on charge 9 that the payment to him of $5,409.75 was a legitimate payment to him and that he did not know the funds had come from the grant from Aotearoa Sports.

[56] He refers to his affidavit filed in support of his application for a discharge without conviction. In that affidavit he said that he won a large sum of money in 2000. He explained that Manukau Sanatan needed its own premises and tried unsuccessfully to get a bank loan to purchase a property. Manukau Sanatan found a suitable property at 8 Reagan Road, Papatoetoe. As Manukau Sanatan could not afford to buy the property, it was bought in Pradeep Chand's name on 28 June 2010. Pradeep Chand paid around $316,000 for the property. Subsequently, the bank approved a loan of $265,000 for Manukau Sanatan to buy the property. The property was then transferred to Manukau Sanatan and it repaid Pradeep Chand over time. A record of title, declaration of trust and other documents were annexed in support of this.

[57] Pradeep Chand requires leave to adduce this evidence in support of his appeal. He relies on the fact that defence counsel at trial was stopped from asking another witness about his financial position and his financial relationship with Manukau Sanatan. That said, he accepts that the evidence is not fresh and could have been adduced through another witness.

[58] As well as being not fresh, we consider the evidence is also not cogent. While it provides support for Pradeep Chand's defence, as put to the jury, that the $5,409.76 he received was a refund for money he was owed for the purchase of the Manukau Sanatan property, that does not assist with the evidence relied on by the Crown — specifically, the evidence that Apna Networks donated its services to the festival and Pradeep Chand's admissions to Mr Leppan that the money was taken as a donation.

[59] As the evidence is not fresh nor cogent it is not in the interests of justice to grant leave to adduce it on appeal. Defence counsel put to the jury Pradeep Chand's defence that he was not involved in the audit, was legitimately paid $5,409.76, and that his admissions to Mr Leppan were not reliable and came only in response to a suggestion put to him by Mr Leppan. We consider there was evidence on which a jury could reasonably convict and there is no real risk of miscarriage of justice in relation to charge 9.

[60] In relation to charge 3, Pradeep Chand submits that there was insufficient evidence on which the jury could convict him. He says there was no evidence that he had any knowledge of Tavua's grant application or was involved in the audit reconciliation.

[61] The Crown case relied on Bharat Kumar's statements to the DIA. As discussed above, in those statements he explained Pradeep Chand's involvement in the application (in approaching him to provide a quotation) and knowledge that no uniforms were supplied (Pradeep Chand reminded him in a telephone call that Mangere Fashions received and banked a cheque and then he gave Tavua a cheque back, and also asked him not to tell Mr Leppan that no goods were supplied). The Crown closed to the jury that they could find Pradeep Chand liable on the basis of secondary liability — that is, he was assisting Rakesh Chand. The jury's verdict was specifically based on secondary liability.

[62] We consider it was for the jury to assess the reliability of Bharat Kumar's statements to the DIA as tested through his evidence at trial. It was also for the jury to assess whether Pradeep Chand's later attempt to have Mr Kumar tell the DIA that the uniforms had been supplied was relevant given that attempt occurred five years

after the audit documents were submitted. It was reasonably open to the jury to find that Pradeep Chand knowingly assisted Rakesh Chand to falsely represent that the grant had been used to pay Mangere Fashions for uniforms when no such uniforms had been provided.

[63] We therefore dismiss Pradeep Chand's conviction appeal.

Pradeep Chand's appeal against sentence

District Court sentence

[64] At sentencing, the Judge described Pradeep Chand's role as follows:[37]

(a) Event 2 (charges 3 and 4): he introduced Rakesh Chand to Bharat Kumar, facilitated the payment and refund arrangement, and asked Bharat Kumar to lie to the DIA inspector.

(b) Event 5 (charge 9): he was the patron of the club, he signed the grant application and was involved in its planning, he dealt with Apna Networks, he cashed the $5,175 cheque[38] and was the recipient of the funds from the $5,409 cheque, he knew about the audit documents and had accepted this, and he knew the money never went to Apna Networks, as he had also acknowledged.

[65] Pradeep Chand applied for a discharge without conviction. Adopting the three-step process for determining such applications, at the first step the Judge assessed the gravity of the offending as "low to moderate".[39] In doing so, she referred to Pradeep Chand's role, as discussed above. She noted that the unaccounted funds relating to his offending totalled $13,669.75 and there was no proof that he had personally benefitted from the funds.[40] She considered the gravity of the offending

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37 Sentencing notes, above n 6, at [24] and [28].

38 We note that the Judge referred to the wrong cheque. As discussed earlier, there were two cheques made out to Pradeep Chand. One of them was for $5,175 but the one that matched cheque butt 86 was cheque 86, which was for $5,409.74. The Judge's reference to the wrong cheque was not, however, material. The point was that he had received the funds that the audit documents purported to represent had been paid to Apna Networks.

39 At [69].

40 At [66].

was mitigated by the absence of any previous convictions, his community involvement, his financial contributions to charities and his support for his family.[41]

[66] At the second step, the Judge considered the direct and indirect consequences of a conviction were also "low to moderate".[42] In doing so, she accepted that a direct consequence was that Pradeep Chand would be removed as a trustee of the Education First Trust. However, she considered that he would still be able to assist that trust, both financially and with his time, even though he would no longer be a trustee.[43] She also accepted that a conviction for dishonesty would have an impact on his ability to run his business including as to renewal of insurance for that business. She referred to affidavit evidence from an insurance broker that most insurance companies would either immediately cancel, or decline to renew, the policy. As to general consequences she accepted that Pradeep Chand would suffer humiliation and embarrassment, and have the stigma of a dishonesty conviction.[44]

[67] At the third step, she considered the low to moderate consequences of a conviction were not out of all proportion to the low to moderate gravity of the offending. She therefore declined the application for a discharge without conviction as it did not meet the statutory test.[45]

[68] The Judge went on to adopt a starting point of 10 months' imprisonment for the offending and to reduce that to seven months' imprisonment for personal mitigating factors discussed when considering the application for a discharge without conviction. She considered home detention was appropriate because of Pradeep Chand's contribution to the community and his low risk of reoffending. She imposed a sentence of two months' home detention on the s 220 charges and a fine of $500 on the obstruction charge.[46]

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41 At [67]–[68].
42 At [71].
43 At [70].
44 At [71].
45 At [72], referring to s 107 of the Sentencing Act 2002.
46 At [73].

Submissions

[69] On appeal, Pradeep Chand submits that the Judge erred in her assessment of the proportionality as between the gravity of the offending and the consequences of the convictions. He submits the gravity of the offending can properly be categorised as low. He emphasises his limited role and that he was not directly involved in the reconciliations. He also emphasises his age at the time of his sentence (66 years), that he has no previous convictions, that he has lived a modest lifestyle assisting his community in New Zealand and Fiji, that for many years he volunteered his time and finances to support Manukau Sanatan, and that there was no suggestion that the grant funds were used for his personal benefit rather than the benefit of the community.

[70] He submits that the proportionality assessment is not simply a matter of comparing labels attached to each consideration, such as low and moderate. Here, there were clear direct and indirect consequences of conviction. The direct consequences meant that he would need to resign as trustee and the viability of his business would be at risk. These were significant and adverse effects. Further, the indirect consequences were a "black mark" against his name in an otherwise exemplary life and where there was no risk he would reoffend.

Assessment

[71] We consider there was no error in the Judge's consideration of the application to discharge Pradeep Chand without conviction.

[72] On the facts accepted by the jury and as assessed by the Judge, Pradeep Chand had been involved in facilitating documentation he knew to be false for the purposes of the audit of the grant for event 2, he knew about the false documentation being put forward for the reconciliation of the grant for event 5 and was involved in cashing the cheque that was ostensibly for Apna Networks but which was to be used to repay money owed to him. We agree with the Judge's assessment that the gravity of the offending was low to moderate, taking into account the amount involved was relatively low and it was not shown that the grant money was used other than for the benefit of the community, and taking into account his personal mitigating factors.

[73] We consider that the removal of Pradeep Chand as a trustee of the Education First Trust, the consequences of a dishonesty conviction for the renewal of insurance policies for his business, and the stigma of a dishonesty conviction were consequences that were proportionate to the low to moderate gravity of the offending.

[74] We dismiss the appeal against sentence.

Richard Kumar conviction appeal

Charges

[75] Richard Kumar faced and was convicted of the following two s 220 charges:

Charge 16	**CRN 16092500068: Richard Kumar**
Theft by a person in a special relationship Section 220 Crimes Act 1961	That RICHARD KUMAR, between 1 November 2012 and 6 September 2013, at Auckland, having received or having control over property, on terms or in circumstances that they knew required them to account to any other person for the property, intentionally failed to so account. **Particulars:** Dealings with $30,000 granted by Four Winds Foundation to Shree Sanatan Dharam Pratinidhi Sabha Manukau Branch Incorporated in respect of grant application 104239 as shown by submitting false documents as part of the audit reconciliation for that grant.

Charge 18	**CRN 16092500069: Richard Kumar**
Theft by a person in a special relationship Section 220 Crimes Act 1961	That RICHARD KUMAR, between 14 November 2012 and 30 July 2013, at Auckland, having received or having control over property, on terms or in circumstances that they knew required them to account to any other person for the property, intentionally failed to so account. **Particulars:** Dealings with $30,255.22 granted by Infinity Foundation to Shree Sanatan Dharam Pratinidhi Sabha Manukau Branch Incorporated in respect of grant application 310664 as shown by submitting false documents as part of the audit reconciliation for that grant.

Appeal issue

[76] On appeal, Mr Kumar submits that the Judge misdirected the jury on the elements of s 220 as they related to him and that the jury's verdict on those charges was unreasonable having regard to the evidence.

The requirements of s 220

[77] Section 220 of the Crimes Act 1961 provides:

> **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—
>
> (a) to account to any other person for the property, or for any proceeds arising from the property; or
>
> (b) to deal with the property, or any proceeds arising from the property, in accordance with the requirements of any other person.
>
> (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.
>
> (3) This section applies whether or not the person was required to deliver over the identical property received or in the person's possession or control.
>
> (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.

[78] Charges 16 and 18 were of failing to account (s 220(1)(a)). Under s 220(1)(a), it is the person who has received or is in possession of or who has control over the property that must know of, and who must have, the requirement to account to another person. The following emphasised words from the section make this clear:

> … 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** … to *account to any other person* for the property …
>
> …
>
> … who intentionally fails to *account to the other person* as so required …

[79] A clear and accurate statement of the elements is set out in *Sullivan v R*.[47] That was a case concerning s 220(1)(b). Heath J said:

> [456] In order to succeed, the Crown must prove beyond reasonable doubt that the particular accused:
>
> (a) Had control over the investors' funds;
>
> (b) Was subject to an obligation to deal with those funds in accordance with the requirement of some other person;
>
> (c) Had knowledge of that particular obligation; and yet
>
> (d) Intentionally dealt with the funds in a manner that he knew and intended to be in breach of that obligation.
>
> (footnotes omitted)

[80] Adjusting that statement for a case concerning s 220(1)(a) the elements the Crown was required to prove for each of charges 16 and 18 were:

(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.

[81] The first and second of these elements are of particular relevance for Mr Kumar's appeal. As to the first element, Heath J said:

> [459] A person who has "control" over investors' funds has the legal ability to determine how they should be applied. Often, the fact that an accused is a director of a company will lead to an inference that the ability to "control" application of the funds exhibited. But the mere fact that someone holds office as a director does not mean that "control" has been proved. A more sophisticated analysis is required.

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[47] *R v Sullivan* [2014] NZHC 2501. See also *Tallentire v R* [2012] NZCA 610, [2013] 1 NZLR 548 at [51].

> [460] Conversely, it is possible for a non-director to have control over the use of funds. For example, a person who acts as either (what are commonly called) a *de facto* or shadow director may fall into this category of person. Further, control may be exercised by an executive who has authority to do so Whether a particular accused has "control" over investors' funds for the purposes of s 220 is fact dependent and requires consideration in the context of each specific case.
>
> (footnotes omitted)

[82] Similarly, in *McGurk v R* this Court described as "adequate and accurate" the following trial Judge's direction:[48]

> To have control over the proceeds from the gaming machines means to be in a position to lawfully determine or decide how those proceeds are to be dealt with". The person said to be in control may not be the only one who controls the use to which the proceeds are put. Nor does the person have to physically deal with the proceeds, for example, actually bank them, to be in control of them.

[83] As to the second element, as this Court said in *Nisbet v R*:[49]

> [13] Liability cannot arise under s 220 unless the circumstances required the accused to deal with property in accordance with the requirements of another person. Section 220(4) provides that it is a question of law whether the circumstances give rise to that obligation on the part of the accused. Questions of law are the province of the trial judge and not the jury.

Evidence charge 16

[84] Charge 16 related to event 11. Event 11 was one of two applications made to different organisations for funding related to the 2012 Diwali festival of lights. Event 11 was an application by Manukau Sanatan to Four Winds. The "main contact person" stated on the application was Vijendra Prasad, Interim Secretary. The application was for a total amount of $99,119 details of which were set out in an attached summary.

[85] The application form stated that it was a condition of the application that funding would be allocated for the purposes stated and that any deviations or requests for reallocation of funding or change of supplier of goods or services must be made to Four Winds in writing. The application disclosed that an application for the same

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48 *McGurk v R* [2015] NZCA 148 at [80]–[81].

49 *Nisbet v R* [2011] NZCA 285, [2011] 3 NZLR 4. See also *R v Sullivan*, above n 47, at [457]–[458].

amount was also being made to Infinity. Rakesh Chand, as organising chairman, and Vijendra Prasad, as secretary, signed the application confirming their consent to the audit process in which they would be asked to provide invoices showing that the funding was spent on the purpose for which it was applied.

[86] Included with the application was an itemised quote from the Rock Factory dated 4 October 2012 totalling $16,019.50. This was to cover sound gear, a stage and marquee and associated costs based on a two-day event. It was not suggested that this was anything other than a quote provided in good faith by the Rock Factory even though the festival was only ever intended to be a one-day event.

[87] A grant of $30,000 was approved on 25 October 2012 and paid to Manukau Sanatan on 1 November 2012. The funding was approved for the following purposes: sound system, stage and marquee (the Rock Factory quote) $10,000; generator $10,000; and soccer tournaments, set up and management, including up to $1,000 for trophies, $10,000. The schedule of approved costs noted that "the funding provided must be used to purchase only the items listed".

[88] The event took place on 4 November 2012. An audit reconciliation was signed by Vijendra Prasad and received by Four Winds on 12 June 2013. The reconciliation schedule included a payment said to have been made to the Rock Factory on 5 November 2012 for $10,185. Included with the schedule was an itemised Rock Factory invoice dated 4 November 2012 for $10,185. There were three items on the invoice (sound equipment and management, storage and marquee hire, and labour and transport) that together totalled $13,039.96. A further item on the invoice stated "DISCOUNT - Less some sound equipment, staging and management as not all required - as agreed with Richard (LESS $4183.43+GST = $4810.95 discounted)". A handwritten notation indicated a payment by cheque number 422 on 5 November 2012.

[89] The focus of charge 16 was accounting in relation to the Rock Factory. The Crown submitted Manukau Sanatan had obtained an inflated quote from the Rock Factory and that Richard Kumar was involved in a receipt and refund arrangement with the Rock Factory for the purposes of the audit.

[90] The Crown called evidence from Michelle Klassens from the Rock Factory. She gave evidence that very close to the event the Rock Factory was told that the plan had changed and it was now to be a one day event. She said her husband attended the event and did the work and received a cheque on the day for $10,185. She then spoke with Richard Kumar who dictated to her "word for word" what to include in the itemised 4 November 2012 invoice totalling that sum. She provided this invoice to match the cheque that her husband had received while also including a refund of $4,165 on the basis that the $10,185 amount was too much for the services provided. She said that Richard Kumar directed her to refund the money to NZ Fiji Sanatan AFC as a donation to the football club.

[91] Ms Klassens' evidence was corroborated by related correspondence and documents. On 13 January 2013 the Rock Factory emailed Richard Kumar requesting that he send to them a tax invoice/receipt for the agreed amount of $4,165 so that the Rock Factory could send a cheque to his nominated address or the transfer could be made online. The Rock Factory followed up this request on 2 April 2013. NZ Fiji Sanatan AFC then provided an invoice for $4,165 dated 27 March 2013 with the description "As agreed over the phone. Re donation to the above association [please] payment within 7 days would be much [appreciated]". An email from Richard Kumar was sent to the Rock Factory on 10 April 2013 providing the account number for NZ Fiji Sanatan AFC and requesting the transfer that day. A cheque for $4,950 was withdrawn from NZ Fiji Sanatan AFC's bank account two days after the Rock Factory cheque for $4,165 was deposited.

[92] Ms Klassens was interviewed by the DIA. The Crown referred to her evidence that, soon after this interview, Richard Kumar telephoned her to ask if she had talked to Mr Leppan about the refund. The Crown submitted to the jury that this phone call indicated that Richard Kumar knew the arrangement with the Rock Factory was wrong or unlawful.

[93] The Crown also relied on the DIA's interview of Richard Kumar. Reportedly he initially said that all services were provided by the Rock Factory as quoted. When shown the handwritten invoice for the $4,165 donation, he agreed that the receipt was in his handwriting and that he would ask for donations from service providers. He

was told of Ms Klassens' account that he had directed her to return surplus funds as a donation. He denied that it was a refund and said he did not recall asking her to refund the money as a donation. He acknowledged that he had called Ms Klassens once he was aware of the DIA investigation.

Evidence charge 18

[94] Charge 18 related to event 12,[50] which was also for the 2012 Diwali festival of lights. This was an application by Manukau Sanatan to Infinity. The "main contact person" stated on the application was Vijendra Prasad, Interim Secretary. The "consent to audit" was signed by Rakesh Chand, Chairman, and Vijendra Prasad, Secretary, on 8 October 2012. The application disclosed that an application to Four Winds had also been made.

[95] The application was for $99,119.85. A summary was provided showing a breakdown of the items to be covered by the grant. The supporting information was largely the same as that provided for the Four Winds application. It included a quote from Boom Boom Fireworks. The quote stated that it was prepared for Manukau Sanatan (Richard Kumar). It was dated 2 October 2012 and was for $17,238.50.

[96] A grant of $30,255.22 was approved on 30 October 2012 and was received by Manukau Sanatan on 14 November 2012. The grant was provided for the following purposes: radio media, $9,565.22; fireworks, $14,990; bouncy castle/merry-go-round, $2,500; venue hire, $2,200; and trophies – Diwali soccer tournament, $1,000. The schedule of approved costs noted that "the funding provided must be used to purchase only the items listed".

[97] The submission of documents for the audit process was late. On 30 July 2013 Vijendra Prasad, Secretary for Manukau Sanatan, wrote to Infinity apologising for the late submission of receipts and invoices. Attachments to this letter included:

(a) An audit reconciliation form showing payments to: Apna Networks ($10,235.22); Boom Boom Fireworks ($4,750); Boom Boom

[50] As noted earlier, there were 11 events, referred to as events 1–8 and 10–12 in the Charge List. Charges in relation to event 9 related to other defendants and were not part of the trial.

Fireworks ($10,240); Mangere Pack Sports ($2,200); and Trophies Plus Engraving ($1,000).

(b) A receipt dated 19 September 2012 from Boom Boom Fireworks to Manukau Sanatan for $14,950 for a commercial fireworks display for an event on 4 November 2012. The receipt included a handwritten notation "6/11/12 CHQ 426 $10,240.00" and "20/11/12 442 $4,750.00".

(c) A Manukau Sanatan bank statement for the period 5-12 November 2012 showing a withdrawal of $10,240 on 6 November 2012 by cheque 426. The particulars, provided in handwriting, were "Boom Boom Fireworks".

(d) A second Manukau Sanatan bank statement for the period 4-11 February 2013 showing a withdrawal of $4,750 by cheque on 5 February 2013 and the particulars, in handwriting, of "Boom Boom Fire".

(e) A cheque (442) dated 20 November 2012 for $4,750 made out to Boom Boom Fireworks and a corresponding cheque butt with the same details.

[98] The Crown case against Richard Kumar was similar to that for charge 16. It related to the audit documentation for Boom Boom Fireworks. The Crown called evidence from Richard Mangos and Rikki-Maria Kare-Ariki from Boom Boom Fireworks.

[99] Mr Mangos gave evidence that he provided the quote. He remembered the job and that Ms Kare-Ariki worked on it. Ms Kare-Ariki was a qualified and experienced pyrotechnician who had worked at Boom Boom Fireworks for eight to nine years. She gave evidence that, from the outset, she was asked to make a display that was worth about $3,500–$4,000 and her preparation was to that end. It was necessary to get a certification for the display. That certification was obtained on 29 October 2012.

The Crown submitted that a comparison between the pyrotechnics approved on that certification — which, the Crown said, was issued in anticipation of a $3,500–$4,000 display — with the pyrotechnics on the quote dated 4 October 2012 provided to Manukau Sanatan, indicated that the certification was for a much smaller display than for that which was quoted.

[100] Mr Mangos also gave evidence that he recalled getting paid for the event. He said that he was overpaid $6,000 for the event and that Richard Kumar had asked him to refund the overpayment and to record it as a donation. Richard Kumar gave the bank account number into which the $6,000 was to be deposited.

[101] The Crown referred to Richard Kumar's interview by the DIA about this transaction. He was asked about an amount of $6,000 that was paid from NZ Fiji Sanatan AFC to Manukau Sanatan on 19 February 2013. He said that NZ Fiji Sanatan AFC is all part of Sanatan and that, if Manukau Sanatan does not have enough money, NZ Fiji Sanatan AFC transfers money to it. He said the money might have been for the mortgage repayments or other fundraising. He admitted that he had provided the NZ Fiji Sanatan AFC bank account for Boom Boom Fireworks and had requested the donation. He said he was authorised by the members and the president. The Crown said that his knowledge about Manukau Sanatan's obligations to account for refunds could be inferred from the fact that he ensured the refund was paid to NZ Fiji Sanatan AFC's account rather than Manukau Sanatan's.

[102] The Crown case was that Richard Kumar knew about the Boom Boom Fireworks's quote being hugely inflated and that it would be used by Manukau Sanatan to accompany the application for a grant. It submitted that Boom Boom Fireworks could not have explained the discrepancy between the number of products in the quote and the certification and that Mr Kumar must therefore have been complicit in the inflated quote. The Crown relied on Mr Mangos' evidence as to the $6,000 refund paid to NZ Fiji Sanatan AFC at Richard Kumar's request.

Defence at trial

[103] The defence for Richard Kumar was that the s 220 charges required that he have "control" over the grant, 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. Defence counsel submitted to the jury that he did not have that control. This was because: Manukau Sanatan completed the application; Richard Kumar was not an executive member of Manukau Sanatan or NZ Fiji Sanatan AFC and could not bind them to anything; and he was not a signatory on their bank accounts and so was not able to sign cheques for them.

[104] Defence counsel submitted that Richard Kumar was simply a coordinator and contact point for the 2012 Diwali festival of lights. It was submitted that he obtained quotes and invoices and forwarded them to the relevant people and that was the extent of his involvement. It was submitted that, because Richard Kumar did not sign the application forms for events 11 and 12 or any event, he was not on notice of the terms and conditions set out on those applications. As he told the DIA, he paid the money to NZ Fiji Sanatan AFC because he was told to. He also told the DIA that he did not remember asking Ms Klassens to refund the money as a donation.

[105] Defence counsel also submitted that the donations were separate transactions rather than refunds. He submitted that, when the 4 November invoice from the Rock Factory was provided, Ms Klassens knew the event was for one day and that Manukau Sanatan was simply paying the amount invoiced. He referred to other evidence from Ms Klassens that she had agreed that $10,000 was a reasonable price for the job. He submitted that, if she felt it was too much, there was no evidence that she told Mr Kumar how she felt. As for Boom Boom Fireworks, he referred to Mr Mangos' statements to the DIA to the effect that the cost of the show was less than the invoice because there was nothing wrong with ripping these people off and he could charge what he wanted for a show. Defence counsel submitted that it was Mr Mangos, not Mr Kumar, who inflated the invoice and it was Mr Mangos and not Mr Kumar who was dishonest.

Trial judge's rulings and directions

[106] As noted earlier, Manukau Sanatan faced charges. During the trial the Judge was required to rule on whether the actions of the defendants could be attributed to it. The Judge ruled that the actions of Rakesh Chand, Pradeep Chand and Vijendra Prasad

could be attributed to Manukau Sanatan. They were the decision-makers directing Manukau Sanatan and were in charge.[51] The Judge further ruled that the actions of Richard Kumar could not be attributed to Manukau Sanatan. He was not a member of the executive and did not have authority in the organisation. Rather his role was akin to that of an employee.[52]

[107] At the end of the Crown case, the Judge was also required to rule on whether the charges should be dismissed under s 147 of the Criminal Procedure Act 2011 on the basis that a jury could not reasonably convict the defendant of them. The Crown did not oppose dismissing charges 16, 17 and 18 against Manukau Sanatan.[53] Those charges related to events 11 and 12 and were based on Richard Kumar's actions in relation to the Rock Factory and Boom Boom Fireworks. As the Judge had ruled that his actions were not attributable to Manukau Sanatan, a conviction against Manukau Sanatan for those actions was not reasonably open to the jury.

[108] The Judge was also required to rule on applications to dismiss the charges under s 147 on the basis that each of the defendants did not have control of the funds in circumstances that required them to deal with the funds in accordance with the requirements of the grantors. The Judge ruled that the grant for each application involved a special relationship of the type referred to in s 220.[54] She rejected a submission that it was sufficient that, providing the grant money received was used for the event for which the application had been made, it did not matter whether the grant had been applied to the particular invoices for which the grant had been made.[55]

[109] Having made that ruling, the question of whether a particular defendant was subject to that obligation depended on whether that defendant had control of the grant funds and the requisite knowledge. The application to dismiss the charges against Richard Kumar relied on the Judge's ruling on attribution. That is, he was akin to an employee who had no control over the grant received from the grantors in circumstances requiring him to account for them. Rather, he was a "gopher" who

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51 *R v Chand* [2018] NZDC 24920 at [54]–[57].
52 At [59].
53 *R v Chand* [2020] NZDC 6960 at [5].
54 *R v Chand* [2018] NZDC 25004 at [11]; and *R v Chand*, above n 53, at [68].
55 *R v Chand*, above n 53, at [56].

liaised with the suppliers with no authority over Manukau Sanatan's bank account or over completing and signing the reconciliation documents.[56]

[110] The Judge rejected this application. She was satisfied there was sufficient evidence to infer that Richard Kumar had the necessary control and knowledge such that the jury could reasonably convict him as a principal. Alternatively, she was satisfied that the jury could reasonably convict him as a party.[57]

[111] In relation to event 11 the Judge relied on the following evidence:[58]

(a) Richard Kumar was a founding member of Manukau Sanatan. He was involved in obtaining the quotes for other events. He was present at the special meeting of Manukau Sanatan on 5 October 2012 which discussed matters arising from an earlier meeting at which it had been agreed to host the Diwali festival subject to the availability of grants from funding institutions. He seconded the motion moved by Rakesh Chand that the Diwali festival be held together with the Diwali Cup soccer tournament. As recorded in the minutes, he agreed, along with the treasurer, to "collate all the papers and lodge the same with the Funders within one month from the date of the event".[59]

(b) Richard Kumar obtained funds from the Rock Factory. This was either an inflated or misrepresented quote. He contacted Ms Klassens and told her what to include in the quote. He directed her to refund the money as a donation to the football club and to describe it as a donation. He confirmed the receipt was in his handwriting. The reconciliation documents were submitted to Four Winds after this refund was made and did not refer to it. Mr Kumar asked Ms Klassens if she had talked to the DIA about the refund after he was aware of the DIA investigation.

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56 At [92].
57 At [94].
58 At [95] and [96].
59 The minutes also record that Rakesh Chand, as presiding chairman, "requested the Secretary, Mr Vijendra Prasad to lodge the application. Mr Prasad agreed to complete the Application Form subject to the Chairman signing the main application".

He initially told the DIA that the Rock Factory had provided all the services as quoted when clearly that had not happened.

[112] In relation to event 12 she relied on the following evidence:[60]

(a) The circumstances set out in [111(a)] above for event 11.

(b) Richard Kumar was involved in obtaining the Boom Boom Fireworks receipt that was misrepresented in the reconciliation documents. The refund for the overpayment to Boom Boom Fireworks was paid into an account given to Mr Mangos by Mr Kumar. Mr Kumar asked Mr Mangos to record the refund as a donation. Mr Kumar said he was authorised to take these actions by the members and the President.

[113] Consistent with this ruling, the jury question trail asked the jury to consider liability against Mr Kumar on the basis of liability as a principal or as a party. The jury returned guilty verdicts on the basis of principal liability. For principal liability in relation to charge 16, the jury question trail asked:

QUESTION 1 Are you sure that between 1 November 2012 and 6 September 2013 Richard Kumar received or had control over the $30,000.00 grant from Four Winds Foundation?

If yes **Go to Question 2**

If no **Find Mr Richard Kumar not guilty**

QUESTION 2 Are you sure that it was in circumstances that required him to account for the grant in accordance with the requirements of Four Winds Foundation?

This is a matter of law that the Judge decides. The answer is yes. Go to Question 3.

The requirements include:

1. The information provided in the application form is true and correct.

[60] At [95] and [97].

2. The funding must be used for the specific purpose for which it was applied and approved.

3. The "cost breakdown", including the quotations, sets out the specific suppliers to be used and the cost of each item.

4. Any deviations or requests for reallocation of funding or change of suppliers must be made to Four Winds in writing.

5. Funds to be accounted for by returning receipts, and copies of bank accounts pertaining to receipts and expenditure.

6. Consent to audit by Four Winds.

7. Invoices and receipts must be true and correct.

8. Acceptance of payment is confirmation that grant will be used for the purpose stated.

9. In the event of non-compliance with any of the conditions, the full grant is repayable.

QUESTION 3 Are you sure Richard Kumar knew of the circumstances that required him to account for the grant in accordance with the requirements of Four Winds Foundation?

If yes **Go to Question 4**

If no **Find Mr Richard Kumar not guilty**

QUESTION 4 Are you sure that Richard Kumar knowingly and intentionally failed to account for the grant in accordance with the requirements of Four Winds Foundation?

If yes **Find Mr Richard Kumar guilty as a principal [no need to consider next question trail]**

If no **Go to the next question trail.**

[114] Questions to the same effect were asked in relation to principal liability for charge 18.

[115] It can be seen that the Judge answered question two in the jury trail and the jury was not required to address it. That was consistent with s 220(4) that it is a question of law for the trial Judge and this Court's decision in *Nisbet v R.*[61] In explaining this to the jury the Judge said:[62]

> [41] I direct you as a matter of law that each of the incorporated societies were subject to the requirements of the foundations. Although, the grants were made to the relevant societies, the defendants were in positions of power by virtue of their office and their leadership roles, and or their decision making abilities in relation to each of the society and the Events. Therefore, the obligations on the incorporated societies bound each of the defendants personally. This is reflected in question 2. …
>
> [42] So you will see that for question 2, the answer is that this is a matter of law that I must decide and the answer to the question is, yes and those are the requirements, and then you can move onto question 3. I need to make it clear that although I have made that decision as a matter of law, *it is a matter for you as to whether you are satisfied that any of the defendants received or have control over the grant money which is the first question*. So I determine what the requirements of the obligations are, *but you get to decide whether they had control over those grants, and you get decide the answers to questions 3 and 4*.

[116] As to what "control" meant (question 1 in the jury question trail), the Judge gave the following general direction for all the s 220 charges:[63]

> [43] Now while we are looking at question 1, I need to say something to you about control because that is key to your determination in relation to question 1. It is something that the defence lawyers have raised during the course of this trial, and I think it is going to be a key issue for you.
>
> [44] The Crown must prove in terms of control that each defendant had control over the grant money in question. As I said, my finding in question 2 does not affect your determination of question 1, you have complete freedom to decide the issue of control. *A person has control over funds has the legal ability to determine how the fund should be applied*. For example, in the context of alleged misuse of company funds, the mere fact that someone holds office as a director does not mean that control will be proved. In the case of the incorporated society, the mere fact that someone holds the office of president or treasurer or secretary does not automatically mean that control will be proved. The question of control is fact dependent and requires your consideration in the context of this specific case.
>
> [45] *Conversely, it is possible for someone who does not hold office to have control over grant funds*. In a number of cases, the Court has been satisfied, for example, that a company was really no more than an alto-ego of the defendant and have treated the company as no more than an instrument of the

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61 *Nisbet v R*, above n 49, at [23].
62 Emphasis added.
63 Emphasis added.

> defendant. *In this case, control is not straight forward. The money has passed to the relevant incorporated society with which the defendants are involved, you have to determine whether this is in fact, the reality of whether the defendants personally controlled the incorporated society or whether they were both in control*.

[117] As to knowledge (question 3 in the question trail), the Judge directed the jury in these terms:

> [46] I want to say something about knowledge. The defendant must know about the requirements allegedly breached. The Crown has to prove that each defendant knew there were terms of some kind affecting their freedom of action in relation to the grant in issue, however, the Crown do not need to establish that the defendant knew the precise details of the obligation. The relevant knowledge must be held at the time that the defendant exercised control over the grant.

[118] The Judge directed the jury in relation to the last element (question 4 in the question trail) for all defendants, illustrating that direction with reference to Rakesh Chand (that being the first of the jury question trails) as follows:

> [47] You will see from question 4 that you have to determine, are you sure that Rakesh Chand knowingly and intentionally failed to account for the grant in accordance with the requirements of Infinity Foundation. So as well as knowing about the requirements in question, the defendants must have failed to account for the grant in a manner that they knew and intended to be in breach of that obligation. So they knowingly and intentionally or deliberately if you like breached that obligation.

[119] The Judge went on to discuss the respective cases for the Crown and the defence in relation to each event and each charge. The key aspects of the Judge's discussion of events 11 and 12 in relation to Richard Kumar were:

> [114] For both Event 11 and 12, the Crown says that Mr Richard Kumar had control over the funds because of his involvement with Manukau Sanatan. …
>
> [115] The Crown says that you should be satisfied based on that evidence and his role that he [had] control over the funds, but again if you are not satisfied of that, the Crown says that you can alternatively, find that he was a secondary party, and the Crown says that you can do this by finding that he provided assistance to whoever it was in the Manukau Sanatan. That was the principal offender.
>
> …
>
> [119] Mrs Cheesman [defence counsel] said that Richard Kumar was simply an event co-ordinator. … She said that even if you were satisfied that it was a refund [rather than a donation], it does not automatically [follow] that Richard Kumar is guilty of any of the charges. You must still be satisfied that

> he had control of the grant. She said that he did not sign the application form, was not an executive member. He simply obtained the quotes and invoices and forwarded them on to Manukau Sanatan. He had no knowledge of the obligations. …

[120] The factors relied on by the Crown for why it was said that Richard Kumar had control over the funds were those summarised by the Judge (and referred to at [111] and [112] above) in her ruling on whether the jury could reasonably find that he had control.[64]

Was there a misdirection?

[121] Richard Kumar submits that the Judge's ruling reflected in question 2 in the jury question trail treated the defendants equally in determining whether they were subject to a special relationship. He submits this is evident from the Judge's direction at [41], set out above at [115]. He submits the trial Judge was required, as a question of law, to determine whether the circumstances with which Mr Kumar was faced required him "to account or to act in accordance with any requirements of" another person.[65] He does not dispute that there was a relationship/obligation as between Manukau Sanatan and the granting foundations. He does dispute that he held such a relationship/obligation. He submits that treating the defendants equally in this regard was inconsistent with the Judge's ruling on attribution.

[122] We agree that the Judge made a general ruling that the grant funds were subject to a special relationship requiring that the funds be accounted for. We agree that the question was whether Mr Kumar was subject to that obligation. On the facts of this case, however, that was determined by whether Mr Kumar had control of the grant funds, whether he knew of the obligation to account, and whether he failed to account for the grant in a manner that he knew and intended to be in breach of that obligation.

[123] In other words, Mr Kumar was not subject to the obligation because he held an office within Manukau Sanatan or had agreed with Four Winds/Infinity directly that he would be subject to that obligation. Rather, if Mr Kumar had control of the funds (that is the legal ability to control how those funds would be applied), then he must

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64 *R v Chand*, above n 53.
65 Crimes Act, s 220(4).

have been entrusted with that control by Manukau Sanatan through those that had authority to give it (namely those whose conduct was attributable to Manukau Sanatan). In other words, the question of control was key as the Judge made clear.

[124] The verdicts were consistent with the jury having understood the distinction between taking steps in connection with the grant money on the one hand and accounting for it and control of it on the other. The point had been emphasised for other defendants in relation to other events. For example, in relation to Ashok Kumar and event 3 the Judge summarised the defence position as follows:

> [77] … Ms Feyen on behalf of Ashok Kumar accepted that he signed the application and the resolution. She spoke to you about his position as secretary. She accepted that he was a signatory to the Club's ASB bank account and that he held that position as secretary for about eight years. She said, however, that he was not the treasurer. He had no assigned direct responsibility for the Club's financial accounts or its reports and that he was not the main contact person. He did not have any direct communications whether by email, phone calls or correspondence with Aotearoa Sports Foundation or any of the other foundations. The fact that he was a signatory was not a position that he held by himself, there was another signatory to the account. There is no evidence, she says, that he knew that the South Auckland Rangers quotation was false, and there is no evidence that he was involved in any of the officials from South Auckland Rangers including Mr Lal. He did not obtain the quote and there is no evidence to say that he knew that the quotation accompanying the application was not genuine.

[125] The jury returned not guilty verdicts for Anup Kumar and Ashok Kumar on all the charges that proceeded to trial.[66] That is consistent with the jury understanding the factual analysis necessary to find that a defendant had control of the grant funds. Ashok Kumar was a signatory on the application but was not otherwise involved in any relevant way. Richard Kumar was not a signatory but a factual assessment was required as to whether he had control of the grant funds provided to Manukau Sanatan in relation to events 11 and 12.

[126] We also note that the jury was given the alternative of secondary liability to consider. For charge 16 (and similar questions were asked for charge 18) the jury question trail asked:

> **QUESTION 1** Are you sure that the principal offence occurred, between 1 November 2012 and 6 September 2013 an

[66] Some charges were withdrawn by consent.

unknown person received or had control over the $30,000.00 grant in circumstances that required the unknown person to account for the grant in accordance with the requirements of Four Winds Foundation, and that the unknown person knew of those circumstances and knowingly and intentionally failed to account for the grant?

If yes **Go to Question 2**

If no **Find Mr Richard Kumar not guilty**

QUESTION 2 Are you sure that Richard Kumar intentionally aided the unknown person in committing that offence, namely by aiding him in obtaining the receipt from The Rock Factory and arranging a refund for overcharged services?

If yes **Go to Question 3**

If no **Find Mr Richard Kumar not guilty**

QUESTION 3 Are you sure that Richard Kumar knew the essential facts of the offence to be committed by the unknown person, namely that:

a. The unknown person received or had control over the grant; and
b. In circumstances that required him to account for it in accordance with the requirements of Four Winds Foundation; and
c. The unknown person knew of the circumstances that required him to so account; and
d. The unknown person intended to fail to account for the grant in accordance with the requirements of Four Winds Foundation.

If yes **Find Mr Richard Kumar guilty as a party**

If no **Find Mr Richard Kumar not guilty**

[127] If the jury had determined that Mr Kumar was not subject to a special relationship with Manukau Sanatan and did not have control of the grant funds, then it is clear that someone else within Manukau Sanatan was subject to the relationship and had that control. It is also clear that Mr Kumar's actions in relation to the payment and refund arrangements with the Rock Factory and Boom Boom Fireworks assisted in the failure to account in accordance with that special relationship. If the jury had been misdirected in relation to questions 1 and 2 on principal liability in relation to Mr Kumar (which they were not), the jury's answers to questions 3 and 4 on principal

liability (which were not affected by any misdirection) would have inevitably led to a guilty verdict on the basis of secondary liability. In other words, even if there was a misdirection as Mr Kumar submits, a conviction on the charge was inevitable given that the jury was sure that Mr Kumar knew of the obligation and intentionally acted contrary to that obligation.

Was the verdict unreasonable?

[128] Richard Kumar submits that his work for Manukau Sanatan did not automatically transfer Manukau Sanatan's obligations (to account to the foundations for the grants) to Mr Kumar personally. Mr Kumar submits that a defendant has those obligations if the company is in reality no more than the alter ego of the defendant. This is in contrast with the position of an employee of a company. Mr Kumar submits that he was in the same position as an employee. While he did undertake some work in relation to the events and the collating of documents for the grant applications, he did not have sufficient control of Manukau Sanatan for the obligations imposed on it to bind him personally.

[129] Mr Kumar submits that the evidence was that he passed invoices to Manukau Sanatan for payment and that he passed cheques to the suppliers. He submits that this, in itself, is not improper as the payment of invoices to the approved suppliers associated with the Diwali festival was the purpose of the grants. He submits that this is insufficient to prove he had control of the funds. He was effectively just the messenger.

[130] He submits that he also did not exercise the requisite level of control in relation to the money that came back from Rock Factory and Boom Boom Fireworks. While he directed the parties to make payments into the account of NZ Fiji Sanatan AFC, as he said in the DIA interview, he did this at the direction of Manukau Sanatan. He was not a signatory to the bank account of NZ Fiji Sanatan AFC and had no legal power to access the account and the money sent there. He submits that true control remained with Manukau Sanatan as the owner of the accounts through which the money passed.

[131] He submits there was insufficient evidence that he was aware of the need to account for the grant funds. This obligation, together with the need for approval to

change suppliers or quotes, was part of the details of the grant. He submits that the audit process goes beyond what someone might know. He submits that the process of collecting and collating the quotes is separate to the control and accounting of the grant funds. The requirement to account for the funds does not arise until after the funding is approved and the funds are transferred. He submits that knowledge and involvement in the gathering of quotes cannot be equated with knowledge of what should happen with the funds if an application for funding is successful. In summary, he submits the evidence is sufficient to infer that he knew about the grant process generally, but not about the requirements to account for the grant funds or that there were limits on the manner in which they could be applied.

[132] We consider there was evidence from which a jury could reasonably find that Mr Kumar had control over the funds. The evidence showed that Mr Kumar was involved in obtaining Manukau Sanatan's gaming machine grants, dealing with the grants and subsequently collating accounting paperwork for the audit reconciliation. The evidence was:

(a) Mr Kumar was a member of Manukau Sanatan at the relevant time.

(b) Mr Kumar was present at the relevant meeting of Manukau Sanatan for events 11 and 12. At this meeting, the arrangements for the 2012 Diwali festival were discussed. Mr Kumar seconded Rakesh Chand's motion that the festival be held with a soccer tournament. It was agreed that "Richard, and Treasurer would collate all the papers and the lodge the same with the Funders within one month from the date of the event".

(c) Mr Kumar was otherwise significantly involved with Manukau Sanatan, being a founding member, attending meetings, moving motions, and obtaining quotes on behalf of Manukau Sanatan from service providers for other events.

(d) Mr Kumar confirmed in his DIA interview that: he gave Manukau Sanatan a hand for big events; they all worked as a team; he, the secretary and the treasurer paid the artists; his job was to hunt around

for artists; he gave receipts, called papers, was involved in flyers; he handed cash to the performers; he issued an invoice; and he intermingled his personal cash with Manukau Sanatan's cash.

(e) There was evidence that he personally had dictated the itemised invoice to the Rock Factory for an inflated amount that corresponded with the amount that Four Winds had approved when making the grant, while including a discount to reflect the actual services that were provided.

(f) The Rock Factory agreed with Mr Kumar that it would refund the inflated payment received by way of a donation to NZ Fiji Sanatan AFC.

(g) There was evidence that the refund made by way of donation matched the "discount" shown on the false invoice as dictated by Mr Kumar.

(h) The false invoice was submitted as part of the audit reconciliation.

(i) Similarly, there was evidence that an inflated quotation by Boom Boom Fireworks was prepared for Richard Kumar.

(j) There was evidence that Richard Kumar was involved in an overpayment to Boom Boom Fireworks and the refund by way of donation.

[133] We therefore dismiss Richard Kumar's conviction appeal.

Rakesh Chand's conviction appeal

Charges

[134] Rakesh Chand was convicted of six s 220 charges, two s 228 charges and one obstruction charge. His conviction appeal on the basis of expert handwriting evidence focusses on two s 220 convictions and one s 228 conviction. He says that, because the prosecution relied on propensity reasoning, if the convictions on the charges in respect

of which the handwriting evidence was relied upon are allowed, this would have impacted on the jury's assessment of the remaining charges.

[135] The two s 220 charges that are the focus of the appeal on the basis of the handwriting evidence are:

Charge 6	**CRN 15092505199: Rakesh Chand** **CRN 16092500062: Ashok Kumar**
Theft by a person in a special relationship Section 220 Crimes Act 1961	That RAKESH CHAND and ASHOK KUMAR, between 8 September and 23 December 2010, at Auckland, having received or having control over property, on terms or in circumstances that they knew required them to account to any other person for the property, intentionally failed to so account. **Particulars:** Dealings with $31,807.24 granted by Aotearoa Sports Foundation to Tavua Cultural Sports Club in respect of grant application 43 as shown by submitting false documents as part of the audit reconciliation for that grant.

Charge 15	**CRN 15092505179: Vijendra Prasad** **CRN 15092505203: Rakesh Chand** **CRN 16092500055: Shree Sanatan Pratanidhi Dharam Sabha Manukau Branch Incorporated**
Theft by a person in a special relationship Section 220 Crimes Act 1961	That VIJENDRA PRASAD, RAKESH CHAND and SHREE SANATAN DHARAM PRATINIDHI SABHA MANUKAU BRANCH INCORPORATED, between 31 May 2012 and 26 November 2012, at Auckland, having received or having control over property, on terms or in circumstances that they knew required them to account to any other person for the property, intentionally failed to so account. **Particulars:** Dealings with $25,000.00 granted by Aotearoa Sports Foundation to Shree Sanatan Dharam Pratinidhi Sabha Manukau Branch Incorporated in respect of grant application 322 as shown by submitting false documents as part of the audit reconciliation for that grant.

[136] The s 228 charge that is the focus of the conviction appeal is:

Charge 11	**CRN 16092500062: Ashok Kumar** **CRN 15092505199: Rakesh Chand**
Using a document Section 228(1)(b) Crimes Act 1961	That RAKESH CHAND and ASHOK KUMAR, on or about 5 November 2010, at Auckland, with intent to obtain any property,

dishonestly and without claim of right used a document.
Particulars: The grant application 2222 submitted to Cuesports Foundation, which included a false quotation purportedly from Guru Travel International Limited for $13,500.00.

Crown case: charge 6

[137] Charge 6 related to event 3. This was an application by Tavua to Aotearoa Sports. The "main contact person" stated on the application was Bobby Chand, President. Rakesh Chand is also known as Bobby Chand.

[138] The application required that two people sign the "consent to audit". This consent included a declaration that the information provided was true and correct. Rakesh Chand and Ashok Kumar signed this declaration on 20 August 2010.

[139] As stated on the application form, funds were sought for the following purpose:

> Our sports and cultural club, going to Australia to compete in a soccer international event. We are short of airfares, uniforms and gears and training expenses … Cheapest quotes are attached …

[140] The application was for $34,067.24, which was to cover: airfares, $16,350; team gear and uniforms, $14,217.24; and training lights, grounds and clubrooms, $3,500.

[141] A grant of $31,807.24 was approved and deposited on 8 September 2010. The Tavua bank statement for 8 September to 5 October 2010 showed the deposit of $31,807.24 withdrawn by four cheques: 15 September, $16,350; 24 September, $9,000; 24 September, $2,000; and 5 October, $4,400. The cheques corresponding with each of these withdrawals were made out to "cash". Each cheque had two signatories, that on the face of them appeared to be the signatures of Rakesh Chand and Ashok Kumar (the two signatories to the grant application). The first three cheques all had Rakesh Chand's name and driver's licence number on the back.

[142] The Crown case was that the documents subsequently provided to Aotearoa Sports to account for the use of the funds were false. The Crown contended that they

purported to show the use of the funds in connection with a soccer tournament in Australia in September 2010 but the club did not participate in any such tournament at that time. The Crown case relied on the payment of $9,000 purportedly made to AK Silkscreen Printers for uniforms and the payments of $16,350 purportedly made to Guru Travel for airfares.

[143] The reconciliation documents included an invoice dated 22 September 2010 from AK Silkscreen to Tavua for $9,000 for "supplied and print soccer jersey, shorts, bags, socks, caps, track pants & tops". A stamp indicated that the invoice was paid on 23 September 2010. This paid date did not correspond with the bank statement that showed a cheque payment by Tavua for that sum on 24 September 2010.

[144] The Crown called evidence from Ashok Kumar[67] who owned AK Silkscreen. He confirmed that this document was a quote and not a receipt. He gave evidence that he never provided the goods referred to in the document and he never received any money from Tavua for it. He was very clear that he "did not receive any cheque or any cash in this amount". He contrasted this with an AK Silkscreen invoice for event 2 for which he received a cash cheque of $3,500.

[145] As to the purported travel to Sydney, the reconciliation documents included the following:

(a) A signed Guru Travel receipt (described as "Receipt No: 3681 Book 18") dated 20 September 2010 recording the receipt from Tavua of $16,350 in cash for air tickets for a sports group to fly Auckland/Sydney/Auckland.

(b) A duplicate of the above document but with handwritten notations "30 people", "to/from Sydney", and "23 to 28 September 2010".

(c) An undated Guru Travel document addressed to Tavua recording a price of $16,350 ($545 per person for 30 persons) for return airfares between Auckland/Sydney/Auckland for a sports group to attend an

[67] A different Ashok Kumar than the defendant.

international event from 23 to 28 September 2010. Noted in handwriting on the document was a signature, the name Chandra Kumar (director) and a cell phone number.

[146] The evidence before the jury also included:

(a) A receipt (number 90, from a receipt book with no letterhead) dated 21 September 2020 for $8,070 cash received from Tavua.

(b) An ASB Bank schedule that recorded a cash deposit of $16,550 made on 22 September 2010 made up of $8,070 marked Tavua, and six smaller amounts marked "other".

[147] The Crown called evidence from Chandra Kumar who was from Guru Travel. He had made statements to the DIA in 2014 and 2017. At trial he said he had health and memory issues. The Crown relied on his statements to the DIA. The Crown pointed to his confirming to the DIA that the signature on the Guru Travel documents with a price of $16,350 was his but saying that he had issued only an invoice and not a receipt. He said the travel that related to the invoice for $16,350 did not go ahead as the tournament was postponed. He said that he recalled Rakesh Chand coming to his Guru Travel shop with $16,350 in cash, wanting to pay for 50 airline seats. He recalled telling Rakesh Chand that the airline seats were cancelled and that he could not supply him with all 50 seats. He also recalled telling Rakesh Chand that he could supply him with seats to the amount of $8,070. He said that Rakesh Chand paid him $8,070 in cash and he issued the receipt number 90 dated 21 September 2010. He said at no stage did he issue a receipt for $16,350 for airline tickets from Guru Travel.

[148] The Crown said Chandra Kumar's statements that there was no tournament in September 2020 were supported by Ashok Kumar and Rakesh Chand's travel records. These records showed that they went to Sydney from 2 to 6 December but took no other trips to Australia in 2010 or early 2011. The Crown submitted that there was only one trip, but two applications and two reconciliations and they both used false Guru Travel documents. The Crown noted that several of the "Guru Travel receipts" documents used in the audits for grants had the same "Receipt No: 3681 Book 18"

reference yet were seemingly for different events on different dates with different total amounts. It was submitted that it could not have been the case that Guru Travel did in fact receive $16,350 but applied it to later travel from 2 to 6 December, because that was inconsistent with Chandra Kumar's statements to the DIA and the reconciliation documents, which did not refer to travel in December.

[149] The Crown also relied on Rakesh Chand's statements to the DIA where he: agreed it was his signature on the resolution; agreed he handled the audit documents; accepted he may have been involved in the Guru Travel document used in the reconciliation; admitted he cashed a cheque because Guru Travel wanted cash; accepted when Chandra Kumar's statement was put to him that he had only paid $8,000 and Guru Travel gave $8,000 back; and acknowledged that he may have obtained the AK Silkscreen invoice.

[150] The Crown submitted that Rakesh Chand was in control of and failed to honestly account for the grant in accordance Aotearoa Sports' requirements. The Crown submitted he provided fraudulent documents and accepted in his DIA interviews that they were responsible for the provision of those documents.[68]

Crown case: charge 11

[151] Charge 11 related to event 6. This was an application by Tavua to Cuesports. The main contact person stated on the application was Bobby Chand.

[152] The application required that two people sign the "consent to audit". It included a declaration that the information provided was true and correct. Rakesh Chand and Ashok Kumar respectively signed this declaration on 5 and 6 November 2010.

[153] As stated in the application form, the application was for the Tavua soccer team to travel to Australia "as they were the finalists at NZDIC last October". The application was for $29,839.88, which was to cover: Guru Travel, $13,500; soccer sportswear, $14,039.88; and Mangere United, $2,300.

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[68] This charge was also brought against Ashok Kumar. As noted earlier, he was acquitted of the charge.

[154] The documents submitted in support of the grant application included a signed Guru Travel document addressed to Tavua providing a price of $13,500 for "25 team members to participate in an IDC tournament held in Sydney, Australia" departing on 2 December and returning on 6 December.

[155] A grant of $19,653.15 was approved on 25 November 2010. The Tavua bank statement showed that this was followed by outgoing cheque payments of $2,300, $5,103, $12,300, $300 and $150 on dates between 27 November 2010 and 22 December 2010.

[156] On 18 March 2011, Cuesports was chasing up the reconciliation, noting that it was due within 30 days of the grant having been made. The reconciliation documents were provided on or after 10 May 2011 on which date Rakesh Chand, as Tavua's president, apologised for the delay. The reconciliation documents included an audit reconciliation report dated 31 March 2011 signed by Rakesh Chand. This recorded expenditure totalling $20,909.50 that included an amount of $13,500 paid to Guru Travel for return airfares to Australia.[69] In support of the reconciliation, a signed Guru Travel receipt (recorded as Receipt No: 3681, Book 18) dated 28 November 2010 recorded the receipt from Tavua of $13,500 paid with cheque number 307 plus $1,200 in cash on that date.

[157] The Crown relied again on evidence from Chandra Kumar. He told the DIA that he did not issue the quotation. When asked about this document in Court, he said that it was not his signature on the document. He also said to the DIA that Rakesh Chand had come to him with $13,500 in cash saying he wanted to book 25 seats to Sydney. He said he could not book that number of seats and so he gave all the cash back to Rakesh Chand.

[158] The Crown also relied on Rakesh Chand's statements to the DIA. He accepted that he signed the application for the grant, that he included the Guru Travel quote, and that he completed and signed the reconciliation report with the Guru Travel receipt. When the DIA showed Rakesh Chand the statement from Chandra Kumar, he

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[69] The other amounts were: $5,109.50 paid to Score Sportswear Ltd for team gear and strips; and $2,300 paid to Mangere United for ground and facilities hire.

said that sometimes members purchased tickets on their credit card and they were then reimbursed with cash, but he would have to come back to the DIA on the detail.[70]

Crown case: charge 15

[159] Charge 15 related to event 10. This was an application by Manukau Sanatan to Aotearoa Sports. The main contact person stated on the application was Vijendra Prasad, secretary.

[160] The application required that two people sign the "consent to audit". It included a declaration that the information provided was true and correct. Two representatives signed this declaration on 24 May 2012.[71]

[161] As stated in the application form, the application was for a cultural performance using performers from the United States. The application was for $40,665, which was to cover:

(a) travel: $16,500;

(b) "Alpine Colour Print": $4,500;

(c) video and photo promotions: $9,200;

(d) Ramluz Sounds: $9,700;

(e) Apna Networks: $6,670; and

(f) hall hire – Samoan AOG: $3,795.

[162] Quotes were submitted in support of this application. They included a quote from the Samoan Assemblies of God NZ Inc dated 24 May 2012 for $3,795 for hall hire on 27 July 2012 for cultural performances. They also included a quote from Ramluz Sounds dated 24 June 2012 for sound and lighting equipment totalling $9,700.

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70 The charge was also brought against Ashok Kumar. As noted earlier, he was acquitted.

71 No names are provided with the signatures.

[163] A grant of $25,000 was approved and deposited. Subsequently, a set of documents was sent to Aotearoa Sports to account for the use of the funds. They included an audit reconciliation form purporting to show that the $25,000 grant was spent as follows:

(a) Guru Travel (air tickets): $13,080, 9/7/12;

(b) Ramluz Sounds (sound equipment): $1,300 and $4,000, 1/8/12;

(c) Alpine Colour Prints (posters, flyers and banner): $4,500, 25/6/12;

(d) Apna 990 (radio advertisements and promotions): $6,670, 4/7/12; and

(e) AOG Church (hire of hall): $1,200, 8/8/12.[72]

[164] The reconciliation form was signed by Rakesh Chand on 26 November 2012. The form required that he confirm that the grant was spent in accordance with the specific purpose detailed in the grant application.

[165] Charge 15 related to the Ramluz Sounds documents. The reconciliation documents enclosed an invoice from Ramluz Sounds dated 1 August 2012 for $5,300 made up of two payments of $1,300 and $4,000 and stamped as paid. The Crown contended that this document was false as Ramluz was not paid $4,000 for providing sounds for the event.

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[72] Charge 14 (one of the s 228 charges) related to the Samoan Assembly of God documents. The reconciliation documents enclosed a receipt for $1,500 from the Samoan Assembly of God (cheque 420). The Crown called evidence from Luisa Vaifale. She gave evidence that she was forced to provide the quote that was false. She said a number of men came to book the hall, paid a deposit of $300 and then came back and pushed her (verbally) into creating the quote. She said the only item on the quote that was correct was the $1,500 hireage fee. She said that what she did was wrong and she should not have done it but felt pushed to do it. She said that she included extra charges for security, cleaning and rubbish bin hire because the men pushed her to write those amounts in and there was never any intention that those services would be provided. The defence on this charge submitted that there was no dishonesty involved. Rather a quote for the full suite of services relating to hiring the hall was sought, but when the grant was for less than the amount applied for, the services obtained were trimmed back to the hireage fee and that was the amount the Assembly of God received. Rakesh Chand was convicted on charge 14.

[166] The Crown called evidence from Mr Ramlu. He gave evidence that Ramluz Sounds was his part-time business and that he did all his own paperwork. He reportedly told Inland Revenue that his business had an annual turnover of about $5,000 per year (although he could not remember saying this when he was asked about this in cross-examination), it was more of a hobby, and he had previously done jobs for free. He confirmed that he had provided the quote for $9,700 submitted in support of the grant application. He said that, despite what he had quoted, he only did the sounds for two events, one in Auckland and one in Hamilton, and got paid $1,300. He said that he had not provided the handwritten invoice (stamped as paid) of the two amounts ($1,300 and $4,000).

[167] Mr Ramlu said that Rakesh Chand had telephoned him about a payment of $4,000 into his bank account that Mr Ramlu was to return to Vijendra Prasad, which he did. Mr Ramlu's evidence was supported by Manukau Sanatan's bank account records, which showed $4,000 being withdrawn on 3 August 2012 and then the same sum immediately refunded.[73] Similarly, Mr Ramlu's bank account records showed the receipt of $4,000 on 3 August 2012 and the same sum paid out on 10 August 2012.

[168] The Crown also relied on Rakesh Chand having accepted that he was involved in the audit relating to event 10. Additionally, when asked by the DIA about the $4,000 paid to Ramluz, he initially denied that that money was repaid. He later backtracked and said that he would have to check because they do sometimes ask for donations.

Defence at trial

[169] In relation to charge 6, the defence submitted that it was clear from the ASB schedule that Guru Travel did receive $16,350 and Chandra Kumar's evidence that he only received $8,070 should not be believed. The defence submitted that the money was used for 22 tickets that were issued in December for two teams to come over from Fiji to Auckland and there was no way that would have cost only $8,070. As to AK Silkscreen, it was submitted that Ashok Kumar may have received full payment but received part of this in cash. Reliance was placed on Ashok Kumar's acceptance

[73] The source is not identified.

that he did not always put cash payments through his accounts and he and his wife used cash payments for holiday funds.

[170] In relation to charge 11, the defence relied on the evidence that there was a soccer tournament in Sydney that was to take place between 3 and 5 December 2010, that the Tavua team travelled to the tournament but it was ultimately rained off. While Rakesh Chand accepted he had signed the grant application, it was not known who had obtained the Guru Travel quotation. The defence submitted that Chandra Kumar's statements to the DIA and his evidence should be set aside as unreliable.

[171] In relation to charge 15, it was submitted that Mr Ramlu's evidence should not be accepted because the dates of the transactions did not match up with his account. The deposit was made with a bank cheque on 3 August, he withdrew the money on 10 August and that did not match up with the $4,000 refunded to Manukau Sanatan on 3 August. The defence also submitted that there was an absence of evidence that Rakesh Chand was dealing with the documentation that was ultimately submitted as part of the reconciliation.

[172] The defence also made submissions about the absence of expert evidence in the context of a trial that concerned whether crucial handwritten documents were genuine. In relation to Chandra Kumar and Guru Travel in particular, the defence submitted that Chandra Kumar was not an honest witness and his evidence flip-flopped so many times during the investigation and the trial that he was incapable of giving credible or reliable evidence at all. The defence submitted that the Crown ought to have called other senior management or staff from Guru Travel and pursued search warrants or production orders of Guru Travel and the defendants' computers to see whether they had equipment capable of generating documents the Crown said were false or fraudulent.

[173] The defence submitted that the DIA interviews were undertaken years after the relevant events, without Rakesh Chand and the others having substantive notice about what was going to be discussed. Rakesh Chand was left trying to think back to those events. The defence submitted that the evidence before the trial was insufficient for the jury to be sure that the charges were proven.

[174] The defence also submitted that the various quotes were provided in support of the grant application on the basis of what would be a dream event if all the funding was provided for that event. However, the cost of the event would ultimately need to be amended depending on the funds received. The defence submitted that the fact that the quote was higher than the payment does not show dishonesty. It was suggested that the common receipt number on Guru Travel documents may have arisen from the honest use of a previous document as a template and an honest and inadvertent failure to update the receipt number when doing so. The submission was also made that a dishonest motive was not necessarily present if funding received for one event was used for another event that took place at a later time.

New evidence

[175] Rakesh Chand seeks leave to adduce a statement of Linda Morrell dated 11 June 2021.[74] This statement sets out the evidence she would give in court as a forensic document examination and handwriting expert. This statement expressed Ms Morrell's opinion on whether it was Chandra Kumar's signature on documents relevant to charges 6 and 11 and whether it was Mr Ramlu's signature on the documents relevant to charge 15.

[176] Ms Morrell's examination involved a comparison of the signatures on these relevant documents with other reference documents accepted as being the signatures of Chandra Kumar and Mr Ramlu respectively.[75] Her statement explained two limitations with her examination of these documents. First, all of the documents provided to her were copies rather than originals. While this enabled the "major details" to be assessed, a proper assessment of speed and fluency could not be made and letter constructions and stroke directions could not always be fully determined. Secondly, she had "very limited reference material for each writer so the opinions expressed … [were] … a preliminary opinion based on material submitted to date".

[177] For Mr Ramlu, the two reference documents were his formal written statement obtained by the DIA and the quotation for $9,700 dated 24 June 2012 that he accepted

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74 Criminal Procedure Act, s 335(2)(c).

75 The statement also covered other signatories but Ms Morrell was unable to offer opinions on them and the focus of the appeal is not on those signatures.

he provided. The comparison documents were a signature on the back of a cash cheque for $4,000 dated 10 August 2012 and the handwritten invoice for $5,300. Ms Morrell's opinion on the former was that it appeared fairly fluent and contained some pictorial similarity with the reference signatures and "could" be a genuine signature. Her opinion on the handwritten invoice was:

> I cannot offer any opinion regarding the handwritten entries on [the receipt] as I have no known comparable handwriting by RAMLU.
>
> The signature at the bottom of [the receipt] appears unfluent and although pictorially similar to reference signatures, contains certain differences which means I am unable to determine whether or not the signature is genuine or a simulation by another writer.

[178] For Chandra Kumar, Ms Morrell's reference documents were Guru Travel receipts dated 28 November 2010, two receipts dated 20 September 2010, and the receipt number 90 dated 21 September 2010. The comparison documents were the Guru Travel document addressed to Tavua from 23 to 28 September 2010 (the document referred to above at [145(c)]), a Guru Travel receipt dated 7 April 2009 for travel to Fiji in April 2009, and a Guru Travel quotation of $13,500 for travel to and from Sydney on 2 and 6 December for 25 people (the document at [154] above). Ms Morrell's opinion on these three comparison documents was that Chandra Kumar had "probably" signed them.

[179] Mr Mansfield accepted at the hearing that the evidence was not fresh because it was available to the defence if he had turned his mind to it.[76] He says the evidence is credible and cogent and leave to adduce it ought to be granted in the interests of justice.[77] The Crown submits the evidence is not fresh, nor cogent and should therefore not be admitted. We agree that the evidence is not fresh, the credibility of the evidence is not in issue, and the issue is whether it is cogent and should be adduced in the interests of justice. We therefore turn to assess its cogency and its potential impact on the safety of the convictions.

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[76] He says the assessment he made at the time was that there was sufficient material to challenge the credibility and reliability of these witnesses. He says that the need for expert handwriting evidence became more apparent during the trial.

[77] *Lundy v R* [2013] UKPC 28, [2014] 2 NZLR 273 at [119]–[120].

Assessment

[180] As discussed above, charge 6 related to the submission of false documents in the audit reconciliation for the grant received by Tavua for travel to Sydney for a soccer tournament in September 2010. The Crown proved this charge in part in reliance on the Guru Travel receipt purporting to show that $16,350 was paid for airfares for this travel. Ms Morrell's statement proceeds on the basis that the 20 September 2010 receipt is accepted as having Chandra Kumar's signature and the document in question is the quotation. She confirms that the quotation is "probably" Chandra Kumar's signature.

[181] However, charge 6, insofar as the Guru Travel documents are concerned, principally relies on the 20 September 2010 receipt provided in the reconciliation. That is the document that purports to show that the requested grant was applied to the purpose for which it was sought and granted. Ms Morrell's evidence therefore does not assist on this point.

[182] In any event, proceeding on the basis that Ms Morrell's evidence confirms that the 20 September 2010 receipt provided in the reconciliation was signed by Chandra Kumar, the evidence is still not cogent. That is because it does not assist with whether the document is genuine. As discussed, several of the Guru Travel "receipts" for different events contained the same reference number. Chandra Kumar's evidence was that, despite the document recording the receipt of $16,350, that travel did not proceed. That evidence was consistent with the evidence that the September tournament was postponed and the travel records of Rakesh Chand and Vijendra Prasad. Further, when it was put to him by the DIA, Rakesh Chand accepted Chandra Kumar's statement to the DIA that he was paid only $8,000 (as per the receipt for the sum) and he gave that amount back.

[183] While there were concerns about the reliability of Chandra Kumar's evidence, that was squarely before the jury and was for them to assess. In her summing up the trial judge directed the jury as follows:

> In terms of the Guru Travel, you will remember Mr Chandra Kumar. You will remember that Ms Hogan [the prosecutor] was allowed to cross-examine Mr Kumar and he was cross-examined at length by the defence lawyers. You

> will have to make a decision about whether you believe Mr Chandra Kumar. The Crown are urging you to rely on his original statements and the defence are simply saying, you cannot rely on much that he said including the statements that he made to Internal Affairs.

[184] The key issue was whether Tavua had paid $16,350 for flights to Sydney for a soccer tournament as was represented in the reconciliation documents. The answer to that had to be no, regardless of whether Chandra Kumar did or did not sign a receipt that purported to show this, because that tournament did not proceed and the travel for that tournament did not take place. It is irrelevant that there may have been travel for a later (rained-off) tournament in December because a separate application for that travel was made and granted to cover that travel (event 6, which is the subject of charge 11).

[185] Moreover, charge 6 also relied on the payment of $9,000 purportedly made to AK Silkscreen for uniforms. Ashok Kumar's evidence was that he had provided a quotation and not a receipt and he had never supplied the uniforms. Ms Morrell's evidence does not assist with this evidence.

[186] As to charge 11, this relied on the alleged false Guru Travel quotation for $13,500 submitted in support of the grant application made to Cuesports. Ms Morrell's evidence was that this quotation was "probably" signed by Chandra Kumar. This is relevant to the charge because Chandra Kumar had said he had not issued the quotation and it was not his signature, both when asked by the DIA and in evidence at trial. However, that the signature on the quotation probably was the same signature as other documents he accepted he had signed (for example, receipt number 90) does not materially assist with whether the quotation was genuine. The receipt that purported to confirm that the grant had been paid in accordance with the quotation relied on for the grant, bore the same reference — Receipt No: 3681, Book 18 — as earlier purported receipts for earlier grants. We are not satisfied that Ms Morrell's evidence would have had an impact on the jury's verdict on this charge.

[187] As to charge 15, the Crown relied on the purported receipt of $5,300 (made up of $1,300 and $4,000), as shown on the handwritten invoice stamped paid, from Ramluz Sounds submitted with the audit reconciliation. Ms Morrell's statement is not cogent. The critical document for this charge was the Ramluz Sounds invoice.

Ms Morrell was unable to assist with whether Mr Ramlu had written the details on the invoice or signed it. The fact that the signature on the back of the cheque for $4,000 could have been Mr Ramlu's was neither here nor there. Mr Ramlu's evidence was that he had received $4,000 into his account and he later withdrew that sum in cash to hand to Vijendra Prasad. His signature on the back of this cheque is consistent with this. The defence sought to make something of the fact that the withdrawal was on 10 August 2010 yet the refund into Tavua's bank account was on 3 August 2010. However, the source of the refund on 3 August 2010 was not identified and may have been made from some other source in anticipation of the refund from Mr Ramlu. It was not necessarily inconsistent with Mr Ramlu's account that he handed $4,000 cash to Mr Prasad on 10 August 2010. What Mr Prasad did with that cash received from Mr Ramlu is unknown. Importantly, this evidence was before the jury. The jury was sure that invoice for $4,000 (stamped paid) was false on the basis of this evidence and Ms Morrell's statement could not have had any impact on that.

[188] In summary, Ms Morrell's statement is not cogent on any of charges 6, 11 and 15. We therefore do not grant leave to adduce this evidence and Rakesh Chand's conviction appeal on those charges fails. This means that Rakesh Chand has not shown that a miscarriage of justice may have occurred on any of charges 6, 11 and 15 that would taint his conviction on the other charges. His conviction appeal on the remaining charges therefore also fails.

Vijendra Prasad conviction appeal

Charges

[189] Vijendra Prasad was convicted of three s 220 charges. One of those charges was charge 15.[78] He appeals that conviction on the same basis as Rakesh Chand appealed his conviction on that charge. He similarly appeals his conviction on the other two charges on the basis that an acquittal on charge 15 would have impacted the jury's assessment of the other two charges because the prosecution relied on propensity reasoning.

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78 See above at [135].

Crown case: charge 15

[190] As discussed above, charge 15 related to event 10. Vijendra Prasad was the main contact person stated on the application. The grant was to cover a quote from Ramluz Sounds for $9,700, amongst other things. Vijendra Prasad signed the audit letter that included the reconciliation documents purporting to show, amongst other things, that Ramluz Sounds had been paid $1,300 and $4,000. The Crown relied on Mr Ramlu's evidence that that he was paid $1,300 for the event and his evidence about the $4,000 he received that he returned to Vijendra Prasad on instructions from Rakesh Chand. The Crown submitted that Vijendra Prasad's denial that he had received that sum from Mr Ramlu was false.

Defence at trial

[191] For Vijendra Prasad, the defence submitted there was nothing to show that he had any control of the grant monies, or had been involved in sourcing quotes or in obtaining or preparing the documents enclosed with the audit letter. It was submitted that Mr Ramlu's evidence was not credible. It was suggested that it was not credible that $4,000 would suddenly turn up in his bank account and there was no independent corroboration of his account of withdrawing $4,000 in cash and handing it to Vijendra Prasad. It was suggested that the DIA had seized on Mr Ramlu's statement that the quotation was not his when it should have made more careful enquiries of Mr Ramlu and the documentation.

Assessment

[192] As discussed above, Ms Morrell's statement is not cogent on charge 15. We therefore do not grant leave to adduce this evidence and Vijendra Prasad's conviction appeal on that charge fails. This means that he has not shown that a miscarriage of justice may have occurred on charge 15 that would taint his conviction on charges 8 and 9. His conviction appeal on all three charges therefore fails.

Vijendra Prasad sentence appeal

District Court sentence

[193] At sentencing, the Judge described Vijendra Prasad's role as follows:

(a) Events four and five (charges 8 and 9): he was secretary of Manukau Sanatan and signatory to the club's bank account, had signed the grant applications, had sent in and was responsible for the audit documents, and knew that proper accounting principles and procedures were not being followed by the club. He dealt directly with some of the supplier organisations that were involved in the events giving rise to the charges.[79]

(b) Event 10 (charge 15): he was secretary[80] of Manukau Sanatan and signatory to the club's bank account, had signed the grant applications, signed the $4,000 cheque to Mr Ramlu and received the $4,000 refund from him, and knew that proper accounting principles and procedures were not being followed by the club.[81]

[194] Vijendra Prasad sought a discharge without conviction. Adopting the three-step process for determining such applications, at the first step the Judge assessed the gravity of the offending as "low to moderate".[82] In doing so, she referred to his role as just discussed. She referred to the unaccounted funds relating to Vijendra Prasad's offending as totalling $23,569.75 and that there was no proof that he had personally benefitted from the funds. She considered the gravity of the offending was mitigated by Vijendra Prasad's age (65 years old), the absence of any previous convictions, his role as a Justice of the Peace, his "huge" community involvement, his giving of his time and his money to charities, his cultural report, his offer to pay reparation and that, once the investigation was underway, he wrote a letter to Manukau Sanatan outlining his concerns about its accounting processes.[83]

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79 Sentencing notes, above n 6, at [27] and [29].
80 As above.
81 Sentencing notes, above n 6, at [33].
82 At [85].
83 At [83]–[85].

[195] At the second step, the Judge considered the direct and indirect consequences of a conviction would be "moderate".[84] In doing so, she noted that Vijendra Prasad's licence as an immigration adviser had been cancelled. On her assessment of the affidavit evidence, that was because of the nature of Vijendra Prasad's conduct rather than the conviction itself. She took the same view of the impact a conviction would have on Vijendra Prasad's small accounting and consultancy business — that is, it was the conduct that would be of concern to Inland Revenue if Vijendra Prasad applied to renew his tax agent status. She referred to Vijendra Prasad's health issues but was not certain there was causal link between them and the court case and his resulting convictions. She referred to Vijendra Prasad's concerns that he would be expelled from the temple he had founded and spent many years and money building, and prevented from participating in the management and support of it. She acknowledged a conviction might have some impact on his involvement, but considered there would be nothing to prevent Vijendra Prasad from continuing to support the temple that he was passionate about.[85]

[196] At the third step, the Judge considered the moderate consequences of a conviction were not out of all proportion to the low to moderate gravity of the offending. In doing so she said:

> [90] Turning to the balancing exercise, I am particularly concerned about your various roles and your employment which requires you to be very careful with documents and to be completely honest, and to disclose honestly. In that role, you are required to act with integrity. I am not satisfied that if you are convicted the direct and indirect consequences of a conviction would be out of all proportion with the gravity of your offending …

[197] She therefore declined the application for a discharge without conviction as it did not meet the statutory test.[86] She adopted a starting point of 14 months' imprisonment and reduced that to 10 months' imprisonment for personal mitigating factors. She considered it was appropriate to substitute this with home detention. She reduced the period of home detention from five months to three months because of

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84 At [89].
85 At [86]–[88].
86 Sentencing Act, s 107.

Vijendra Prasad's offer to pay reparation. He was therefore sentenced to three months' home detention and ordered to pay reparation of $23,569.75.[87]

Submissions

[198] Vijendra Prasad submits on appeal that the gravity of the offending should have been assessed as low. The events for which the grants were sought were genuine, it was not shown that the funding obtained was used for any purpose other than those events and the defendants applied their own funds and significant voluntary hours to them. The personal factors the Judge relied on showed that he had lived a highly respectable life and that the offending was an uncharacteristic "blip" in his later years. His letter to the Manukau Sanatan club referring to the dubious accounting practices being followed and his offer of reparation show that he identified and sought to correct this error.

[199] Vijendra Prasad submits that the Judge correctly assessed the consequences of a conviction as moderate. He submits that, although many of the consequences will likely stem from his conduct rather than his convictions, a conviction itself is a "black mark" particularly for someone with no previous convictions.[88] He submits it achieves nothing for the community other than to show punishment for a mistake. Here, the charges (theft by a person in a special relationship) on the face of them do not fairly reflect his culpability because they suggest he personally benefitted from funds entrusted to him when that is not the case.

[200] Vijendra Prasad submits that the Judge erred in her proportionality assessment. He says this assessment is more nuanced than comparing labels of low to moderate with moderate. Here, the experience and embarrassment of having stood trial and being found guilty was sufficient to hold him accountable. The low-level nature of the offending, the even lower likelihood that he would reoffend and the respectable fashion in which he had otherwise led his life more than offset any need to further mark his conduct with convictions.

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87 Sentencing notes, above n 6, at [91]–[93].
88 Referring to *DC (CA47/2013) v R* [2013] NZCA 255 at [44].

Assessment

[201] We consider the Judge correctly assessed the offending as low to moderate. We accept that Vijendra Prasad had significant personal factors that materially reduced his culpability. However, he was directly involved in the false documentation relied upon by the club and directly involved in receiving the return of the $4,000 paid to Mr Ramlu.

[202] It is accepted that the Judge correctly assessed the direct and indirect consequences of the offending. We do not accept that she then simply compared one label with the other. She referred specifically to the lack of integrity the offending displayed in circumstances where Vijendra Prasad's employment roles required complete honesty.

[203] We acknowledge Vijendra Prasad's subsequent steps to correct his offending, especially the substantial offer of reparation. Given that he did not benefit personally from the offending this was materially mitigating. The Judge recognised this in reducing his sentence to three months' home detention. There was no error in the Judge's approach.

[204] We dismiss the appeal against sentence.

Result

[205] The Crown's application to dismiss Pradeep Chand's appeal for want of prosecution is declined. An extension to appeal out of time is granted. Pradeep Chand's application to adduce further evidence is declined. Pradeep Chand's conviction appeal is dismissed. His sentence appeal is also dismissed.

[206] Richard Kumar's conviction appeal is dismissed.

[207] Rakesh Chand's application for leave to adduce further evidence is declined. His conviction appeal is dismissed.

[208] Vijendra Prasad's application for leave to adduce further evidence is dismissed. His conviction appeal is dismissed. His sentence appeal is also dismissed.

Solicitors:
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