



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not reportable

Case no: 1396/2016

In the matter between:

KATERYNA KARPOVSKA

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Karpovska v The State* (1396/2016) [2017] ZASCA 101(24 August 2017)

Bench: Bosielo, Majiedt, Petse and Saldulker JJA and Lamont AJA

Heard: 16 August 2017

Delivered: 24 August 2017

Summary: Appeal – application for leave to appeal against convictions dismissed by regional magistrate - petition refused by the court a quo- special leave to appeal against the dismissal of petition granted to Supreme Court of Appeal – whether leave to appeal ought to have been granted by court a quo - whether there are reasonable prospects of success.

ORDER

On appeal from: Western Cape High Court, Cape Town (Saldanha and Baartman JJ):

The appeal against the refusal of the petition in respect of counts 1 and 4 is dismissed.

JUDGMENT

Saldulker JA (Bosielo, Majiedt, Petse JJA and Lamont AJA concurring):

[1] The appellant was indicted in the Bellville Specialised Commercial Court on four counts of fraud and one count of contravening the Prevention of Organised Crime Act 121 of 1998 and one count of contravening the Financial Advisory and Intermediary Services Act 37 of 2002.

[2] She was convicted on three counts of fraud and acquitted on all the other charges. On count 1 she was sentenced to eight years' imprisonment wholly suspended for a period of five years on condition that she was not convicted of an offence involving fraud or theft committed during the period of suspension, and on the further condition that she repays the complainant the sum of R1, 755 million on or before 28 February 2014. On counts 3 and 4 she was sentenced to three years correctional supervision in terms of s 276 (1)(h) of the Criminal Procedure Act 51 of 1977.

[3] An application for leave to appeal against the convictions was dismissed by the regional magistrate. The appellant petitioned the Western Cape High Court, Cape Town (the high court) and leave to appeal was granted in respect

of count 3 only. An application for special leave to appeal against the refusal of the petition in respect of counts 1 and 4 was granted by this court.

[4] The crisp issue to be determined in this matter is not whether the appeal on the merits should succeed or not, but whether leave to appeal should have been granted by the court a quo. This requires us to determine whether the court a quo should have granted the petition or not.

[5] Leave to appeal has already been granted against the appellant's conviction on count 3 by the high court. The question is thus whether the appellant has established that there are reasonable prospects of success in an envisaged appeal against the convictions on counts 1 and 4. The most recent decision concerning this issue is *S v Radebe*.¹

[6] We do not find it necessary to deal with the merits of this matter in any great detail, save to consider whether there are reasonable prospects of success or not. In respect of count 1: the trial court in a very carefully reasoned judgment set out all the relevant facts and rejected the evidence of the appellant and accepted the evidence of the complainant. The complainant's evidence was correctly accepted as credible by the magistrate and was corroborated by voluminous documents which were produced in evidence. The entire weight of the evidence was considered fully by the magistrate who, in such consideration, reached the conclusion that the evidence of the complainant was to be accepted and that the evidence of the appellant fell to be rejected as false beyond reasonable doubt.

[7] The trial court made credibility findings with which this court will not readily interfere. The magistrate's assessment of the evidence accords with the probabilities to be attached to such evidence, which evidence established the guilt of the appellant beyond a reasonable doubt. Thus there is no reasonable prospects of success on count 1.

¹ *S v Radebe* [2016] ZASCA 172; 2017 (1) SACR 619 (SCA).

[8] On count 4: the facts were largely common cause. The trial court carefully considered all the evidence. It accepted the complainant's version and rejected the defence raised by the appellant on the basis that no duress had been established. There is no reason to interfere with this finding. Thus there is no reasonable prospects of success in respect of count 4.

[9] In the result the following order is made: The appeal against the refusal of the petition in respect of counts 1 and 4 is dismissed.

H K SALDULKER
JUDGE OF APPEAL

Appearances:

For the Appellant:

A A Mia

Instructed by:

William Booth Attorneys, Cape Town

Hanno Bekker Attorneys, Bloemfontein

For the Respondent:

F J Vogel

Instructed by:

The Director of Public Prosecutions, Cape Town

The Director of Public Prosecutions, Bloemfontein