

## ***Thakur v Police* (2016) SASR 180;[2016] SASC 75 (3 June 2016) – Supreme Court of South Australia**

‘Appeal’ – ‘Court not to allow appeal against order confirmed by consent unless consent was not freely given’ – ‘Interim intervention order’ – ‘Protection orders’

Appeal Type: Appeal to set aside an interim intervention order.

Facts: On 13 January 2015, a magistrate issued an interim intervention order against the appellant protecting his wife. The appellant was reported for five breaches of this order. On 7 May, the appellant was interviewed by police in relation to those alleged breaches. The appellant provided the police with his phone and its passcode. On the same day, the prosecutor contacted the appellant’s solicitor and offered to resolve the trial if the appellant consented to the confirmation of the intervention order. The prosecutor also offered not to proceed with the fresh charges in relation to the alleged breaches in those circumstances. The appellant’s solicitor said his client agreed to this. After being charged with subsequent breaches, the appellant sought to appeal the confirmation of the order.

Issue/s: The appellant consented to the confirmation of the interim intervention order in error or by mistake because he believed there was no other satisfactory alternative available to him to recover his mobile telephone from police and thereby protect the confidentiality of commercially sensitive information.

Decision and Reasoning: To find ‘special reasons’ under s 42(1a)(c) of the *Magistrates Court Act 1991* (SA) to allow an appeal against an interlocutory order, only an ‘arguable’ case needs to be demonstrated. The appellant’s case was arguable (see [26]-[27]). Permission to appeal was granted.

However, the appeal was dismissed. At [38], Stanley J held that:

*‘a court will allow an appeal from the confirmation of an intervention order made pursuant to s 23(3) of the Intervention Orders (Prevention of Abuse) Act 2009 (SA) in circumstances where the defendant’s consent was not freely given in the sense that the consent was not properly informed, was made inadvertently or was made by mistake or in error in the sense that the person giving the purported consent did not appreciate to what it was he or she was consenting’.*

His Honour rejected the submission that ‘it is sufficient to set aside the order that a defendant only establishes that he or she consented to the confirmation of the order without due consideration to material matters, if that proposition is understood as requiring merely a failure on the part of the defendant to direct his or her mind to some relevant consideration in giving consent’ (see [39]).

Here, the appellant’s consent was freely given. Stanley J did not accept that the appellant had no satisfactory alternative but to consent to the confirmation of the intervention order. He could have been

under no misapprehension as to what it was consenting to (see [40]-[41]).