

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 23/01

DAVID ASHLEY PRICE

Applicant

versus

THE STATE

Respondent

Decided on : 4 September 2001

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JUDGMENT

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YACOOB J:

[1] The applicant seeks special leave to appeal against his conviction by the South Eastern Cape High Court on two counts of fraud. The High Court and the Supreme Court of Appeal refused leave to appeal. The only constitutional issue of potential substance is said to arise from the approach of the judge to the applicant's evidence that his decision not to provide certain information to the police was an exercise of his right to silence in terms of section 35(1)(a) of the Constitution. The judge found that evidence unacceptable in the circumstances of the case. The applicant contends that this approach offends against his right to silence.

[2] It is, however, not necessary to decide the question. If it is assumed in favour of the applicant that it was not permissible to draw any adverse inference against him from his silence and this aspect is excluded from consideration altogether, the evidence of the applicant's guilt is

so compelling that there is no prospect that the applicant's convictions will be set aside on appeal. In the circumstances no purpose would be served by considering the validity of the constitutional issue that is said to arise. Special leave to appeal is accordingly refused.

Chaskalson P, Langa DP, Ackermann J, Kriegler J, Madala J, Mokgoro J, O'Regan J, Sachs J, Du Plessis AJ and Skweyiya AJ concur in the judgment of Yacoob J.