



DPP/L/91-92/855/0003

DIRECTOR OF PUBLIC PROSECUTIONS

New South Wales

THE DIRECTOR

13th January, 1992

Regina -v- Akhandaranda SARASWATI
Gosford District Court No. 88/31/0307
Submission by Crown Prosecutor that an
ex-officio indictment be filed

Mr. R. Ellis, Crown Prosecutor recommends an ex-officio indictment be filed against the abovenamed for the two counts of indecent assault which were dismissed by Mr. B. Butler, Magistrate at the Gosford Local Court on 25 June, 1991. Saraswati was committed for trial on the charge of incite to act of indecency.

The allegations of the two acts of indecency relate to the touching of the complainant's breasts at a time when she was living as a member of the Ashram of which Saraswati was the spiritual and administrative head. She lived within the Ashram from age 7 years to 16 years. The indecent assaults are said to have occurred within the periods of late '83 early '84 and again in late '84. She was aged approximately 13 and 14 respectively.

The credit of the complainant was a crucial issue in the proceedings and much was made by the defence of the absence of complaint. Mr. Ellis submits that there is credible evidence of complaint and indeed some corroboration of the complaints. Mr. Chester Porter, Q.C. in his submissions to the learned magistrate was quite critical of the delays of complaint and additionally the conflicts between the complainant and those persons complained to.

More important perhaps is the attack upon the complainant's credibility because of

previous statements made to Saraswati's solicitor, Mr. Greg Walsh at the time of the previous proceedings against Saraswati. In these statements the complainant said nothing happened to her and any touchings were accidental. She admits to the Crown and gave evidence accordingly that she did in fact make these statements to Mr. Walsh, but now says she lied to him as to the factual content. As to this Mr. Ellis found her to be a witness of truth and that her evidence was strong, despite vigorous and at times harsh cross examination.

Mr. Ellis urges strongly that an ex-officio indictment is justified and says he is supported by Mr. Rosser, Q.C. who has had a close association with the Saraswati matters. Mr. Ellis says "in my view, if a magistrate had spent less time trying to impress Mr. Porter, Q.C. and more time applying his common sense to the evidence he would not have arrived at the decision he did and certainly not given the tortured reasonings he did". I appreciate that Mr. Ellis has a far more detailed knowledge of the case than me and that he was present when the magistrate gave his reasons however, from my reading of those reasons I do not readily see that they are tortured or there appears to be any attempt of making an impression upon Chester Porter, Q.C.

The magistrate certainly was quite critical of the lateness of complaint and was not impressed with the complainant's retraction of what she had said to the solicitor, Mr. Walsh. He points to the circumstance of a property dispute between the complainant's parents and Saraswati and suggests that the complainant may be a type of person who could be easily influenced by such circumstances. In conclusion, he appears to have firmly formed the view that a jury would not accept the evidence of the complainant and accordingly discharged him on those two counts. He also recognised that the complainant's credibility problems would be applicable to the incitement to commit act of indecency charge but committed Saraswati for trial because there was corroborative evidence by another girl who was present when the complainant was enticed to enter Saraswati's bed, they all being naked.

I again concede Mr. Ellis' far more detailed knowledge of the evidence and the witnesses but nevertheless, the learned magistrate had the opportunity also of assessing the material and the demeanour of all witnesses and appears to have properly approached his

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difficult task. He not only had the assistance of an eminent Q.C. for the defence but was no doubt also assisted by the careful and comprehensive submissions made by the very experienced and competent Crown Prosecutor. In those circumstances and failing to observe any error of law by the magistrate I recommend against the filing of an ex-officio indictment.

C.A. Liland
C.A. Liland, Q.C.
Senior Deputy Director

*I agree and decline to file
an ex officio indictment*

[Signature]
20.1.92