

Tay Wee Kiat and another v Public Prosecutor and another appeal
[2019] SGHC 224

Case Number : Magistrate's Appeals Nos 9079 and 9080 of 2017
Decision Date : 20 September 2019
Tribunal/Court : High Court
Coram : Sundaresh Menon CJ; Tay Yong Kwang JA; See Kee Oon J
Counsel Name(s) : The appellants in MA 9079/2017/01 and MA 9080/2017/01 and the respondents in MA 9079/2017/02 and MA 9080/2017/02 in person; Tan Wen Hsien and Angela Ang (Attorney-General's Chambers) for the respondents in MA 9079/2017/01 and MA 9080/2017/01 and the appellants in MA 9079/2017/02 and MA 9080/2017/02.
Parties : Tay Wee Kiat — Chia Yun Ling — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Commencement of sentence – Varying compensation order

20 September 2019

See Kee Oon J (delivering the judgment of the court *ex tempore*):

Commencement of sentences

1 These matters are before this court to determine the appropriate commencement dates for the sentences that we had previously imposed upon the conclusion of these appeals on 2 March 2018. We agree with the Prosecution and order the sentences that we had previously imposed to commence at the expiry of the sentences that the accused persons are currently serving. We do not see any valid reason for the sentences to commence on an earlier date as that would virtually enable the accused persons to evade punishment entirely for one set of offences.

2 In particular, we are conscious that there are two victims involved in two separate sets of proceedings. Moreover, we are of the opinion that the respective global sentences for each of the accused persons are not crushing or disproportionate, and properly reflect the overall criminality of the offences.

Compensation

3 In addition, the Prosecution has drawn our attention to the question of compensation. We had previously heard the parties' further submissions in respect of compensation and ordered compensation for the victim (Fitriyah) as well as default imprisonment terms if the compensation sums are not paid. We note that the accused persons have yet to pay the amounts ordered. On this basis, the Prosecution now urges us to make further directions with a view to ordering garnishment or attachment of the accused persons' property for the purposes of satisfying the unpaid compensation sums.

4 In our view, if the Prosecution had wanted to seek orders for examination and garnishment, the necessary directions ought to have been sought at the last hearing before us. If we were to accede to the Prosecution's present request for the court to exercise its powers under s 360(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), it would amount to a variation of the orders

we had previously made. While we recognise that s 360(1) of the CPC does not limit the court to one mode of enforcing payment of compensation, we are not inclined to accede to the Prosecution's request.

5 In this connection, we wish to make some observations in relation to compensation orders. We consider that the Prosecution's request would result in precisely what the compensation regime under the CPC should seek to avoid – undue protraction of proceedings by converting a concluded criminal matter into “quasi-civil” enforcement proceedings over which extended judicial oversight has to be exercised. We had cautioned against such a prospect in our supplementary judgment in *Tay Wee Kiat and another v PP and another appeal* [2018] 5 SLR 438 at [8]. The court would have to direct further inquiries into the offenders' means and assets, and thereafter consider the further exercise of its powers under s 360(1) of the CPC. This places undue strain on limited judicial resources and investigative resources, since the investigation officer should continue to assist in facilitating payment to the victim. For similar reasons, we decline to prescribe a “two-step framework”, as proposed by the Prosecution, for how compensation orders should be made. Instead, in cases where the Prosecution is seeking a compensation order, the Prosecution should also consider which of the default mechanisms prescribed in s 360(1) CPC it wishes to seek. The court will be well-placed to consider how best to deal with the case at hand. There is in any case no evidence to suggest that existing practices and processes for the making of compensation orders are seriously deficient or unworkable for the majority of cases.

6 It may be argued that offenders might be incentivised to serve the default terms as opposed to paying the court-ordered compensation sum where the amount involved is large. But often, compensation amounts are fairly modest as they are quantified on a rough-and-ready basis. In most cases, offenders with sufficient means are likely to pay (and do pay) the compensation amount to avoid serving the default term. While there may be others who might choose not to pay compensation or remain adamant on not paying in any event, these persons constitute the minority.

7 In cases where it is clear to the court that the offender in question will not be willing or able to pay the victim, there is at least one other option available to help the victim secure a part, if not all, of the compensation amount. The victim may apply for victim compensation through the Community Justice Centre's Victim Assistance Scheme. The amount that may be obtained is generally capped at about \$1,000 (per compensation order).

8 In the course of the hearing, we sought and obtained confirmation from both the accused persons that they intend to serve the default sentences. Hence there is no further issue as to the compensation orders.

Conclusion

9 In summary, we order the sentences that we had previously imposed to commence after the expiry of the sentences that the accused persons are currently serving. We decline to exercise our powers to make further directions in relation to compensation or to consider if any other orders should be made under s 360(1) of the CPC.