

Mohammad Yusof bin Jantan v Public Prosecutor
[2021] SGHC 148

Case Number : Criminal Motion No 58 of 2021
Decision Date : 22 June 2021
Tribunal/Court : General Division of the High Court
Coram : Tay Yong Kwang JCA
Counsel Name(s) : The applicant in person; Norman Yew and Louis Ngia (Attorney-General's Chambers) for the respondent.
Parties : Mohammad Yusof bin Jantan — Public Prosecutor

Criminal Procedure and Sentencing – Criminal review – Leave for review

22 June 2021

Tay Yong Kwang JCA:

Introduction

1 This is the second application by Mr Mohammad Yusof bin Jantan (“the applicant”) under the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) seeking leave to review his concluded appeal in HC/MA 9309/2019 (“MA 9309”). In this application, the applicant asks for the following order:

To accept my review application as miscarriage of justice due to the analytic variation. I would like to request for the Chief Justice to preside my criminal motion. I was given an amended “NE” after my previous criminal motion (CM 30) was dismissed recently in 2021. The amended copy of “NE” was not re-certified by Amdatex that had certified the original copy.

2 The pertinent facts in the applicant’s appeal in MA 9309 are set out in my decision in the applicant’s first application for leave in *Mohammad Yusof bin Jantan v Public Prosecutor* [2021] SGHC 82 (the “Leave Judgment”) at [4]–[7]. Briefly, the applicant claimed trial to three charges. Two were under s 8(b)(ii) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) and the third was under s 8(a) of the MDA. The District Judge (“the DJ”) convicted the applicant on the three charges and imposed an aggregate sentence of seven years and eight months’ imprisonment and 12 strokes of the cane.

3 In MA 9309, the applicant appealed to the High Court against his conviction and sentence. The applicant’s position on appeal was essentially the same as his defence at the trial. On 24 July 2020, sitting as a Judge of the High Court, I affirmed the DJ’s decision and dismissed the applicant’s appeal against his conviction and sentence.

4 On 5 March 2021, the applicant filed an application in HC/CM No. 30 of 2021 under s 394H of the CPC for leave to file an application to review the appeal in MA 9309 (“the first leave application”). He filed a supporting affidavit and his written submissions. The Prosecution filed its written submissions in response. On 9 April 2021, I dismissed the first leave application summarily as it failed to satisfy the requirements under s 394J of the CPC: see Leave Judgment at [19]–[31].

5 On 8 June 2021, the applicant filed the present application, again seeking leave under s 394H of the CPC to file an application to review the appeal in MA 9309. In this second application, he raises essentially the same points as those raised in the first leave application, including arguments on his urine test results and the clerical error in the Notes of Evidence (see Leave Judgment at [24] and

[25]). He also asserts that I dismissed the first leave application “without due consideration” as to whether the amendment of the Notes of Evidence was proper, fair and justifiable and that “by quoting information from an uncertified transcript”, I have “shown a lack of care in the handling” of his case. He therefore repeats his request made in the first leave application that this application be heard before the Chief Justice.

6 As explained in the Leave Judgment (at [2]), under s 394H(6)(b) of the CPC, where the appellate court in question is the High Court, an application for leave to make a review application is to be heard by the Judge who made the decision to be reviewed unless that Judge is not available. On this basis, since I was the Judge who heard MA 9309, I dealt with the first leave application and I now deal with this application as well.

The parties’ arguments

The Applicant’s case

7 In this application, the applicant submits that in the Leave Judgment, I was wrong to have accepted that there was a clerical error in the Notes of Evidence recorded in the District Court. The applicant asserts that I dismissed the first leave application “without due consideration” as to whether the amendment of the Notes of Evidence was proper, fair and justifiable. My finding on this issue is set out in the Leave Judgment at [24] and [25]. The applicant also repeats his arguments made in the first leave application. Those arguments may be found in the Leave Judgment at [14] and [15].

The Prosecution’s case

8 The Prosecution submits that:

- (a) The applicant’s sole ground in this second leave application is that I accepted wrongly that there was a clerical error in the Notes of Evidence.
- (b) This application is not permitted under s 394K(5) of the CPC.
- (c) Based on a plain reading, s 394K(1) of the CPC does not prohibit the applicant from filing this second leave application. However, this application fails to satisfy the requirements in s 394J of the CPC and should therefore be dismissed.

The decision of the court

9 As this is the applicant’s second application seeking leave to make a review application, the question arises as to whether such an application is prohibited by ss 394K(1) and 394K(5) of the CPC. The section reads:

Other matters concerning review applications and leave applications

394K.—(1) An applicant cannot make more than one review application in respect of any decision of an appellate court.

(2) An applicant cannot make a review application in respect of an earlier decision of an appellate court after —

- (a) in any case where a court hears a related civil application made by the same applicant

and reserves judgment in that related civil application — the time that court reserves judgment in that related civil application; or

(b) in any other case where a court hears a related civil application made by the same applicant — the time that court delivers judgment in that related civil application.

(3) Where the appellate court is the High Court, no appeal may lie against a decision of the appellate court on a leave application or a review application.

(4) Where the appellate court is the High Court, no application under section 397(1), and no reference under section 397(2), may be made in respect of a decision of the appellate court on a leave application or a review application.

(5) No leave application, and no review application, may be made in respect of a decision of an appellate court on a leave application or a review application.

Section 394K and the other provisions in the CPC relating to review of concluded appeals were introduced by the Criminal Justice Reform Act (Act No 19 of 2018).

Section 394K(1) of the CPC

10 The Prosecution argues that s 394K draws a distinction between leave applications and review applications. This distinction is rooted in s 394F(1) which defines leave applications and review applications. The distinction also appears in s 394H of the CPC which provides that “[b]efore making a review application, the applicant must apply to the appellate court for, and obtain, the leave of that court to do so”. Therefore, the scheme of the review provisions in the CPC is that any review application must be preceded by a successful leave application.

11 Section 394K(1) states that an applicant cannot make more than one review application in respect of any one decision of an appellate court. It does not mention leave application. In contrast, ss 394K(3), 394K(4) and 394K(5) mention both leave application and review application. Accordingly, the Prosecution submits that on a plain reading of the section, s 394K(1) does not prohibit the applicant from making a second leave application but it does not allow him to make a second review application.

12 In my opinion, such a plain reading of the section cannot be right. A review application can be made only after leave to do so has been obtained in a leave application. A leave application is therefore a mandatory stage one and the review application follows as stage two once the hurdle has been crossed by the obtaining of leave at stage one. If stage two is not permitted by s 394K(1), it would be completely futile to allow stage one to proceed. One can imagine the absurdity of a court telling an applicant that he is granted leave to make a review application but he cannot do so anyway under the law.

13 A purposive and proper reading of s 394K(1) of the CPC therefore dictates that since an applicant cannot make more than one review application in respect of any decision of the court, it follows logically that he also cannot make more than one leave application because that is the necessary prelude to a review application. The applicant’s present application is a second leave application in respect of MA 9309 and is therefore not allowed pursuant to s 394K(1).

14 There is no risk of injustice in the prohibition against repeated applications for leave because in a truly deserving case, the appellate court’s inherent jurisdiction to review its own decision has been

preserved in s 394J(1)(b) of the CPC. However, invoking the inherent jurisdiction of the court relates back to the principles for reviewing concluded appeals enunciated by the Court of Appeal in *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 ("*Kho Jabing*"). These principles are essentially the same as the requirements for review set out in s 394J of the CPC because that section is a codification of the *Kho Jabing* principles.

15 In any event, as we have seen, this second leave application merely puts forward the same arguments (subject to the next point which I discuss below) raised in the first leave application and which have been rejected in the Leave Judgment. Accordingly, this second leave application should be dismissed summarily.

Section 394K(5) of the CPC

16 In this second leave application, the only new argument raised by the applicant is that my conclusion in the Leave Judgment about the clerical error in the Notes of Evidence was wrong. All his other arguments on the merits of his appeal were a repetition of his arguments made in the first leave application.

17 In so far as the applicant's only new argument is concerned, it is a contention that my decision in the Leave Judgment was made in error. By challenging the correctness of the Leave Judgment, this second leave application is tantamount to seeking also a review of the Leave Judgment, in addition to seeking a review of MA 9309. This is clearly impermissible pursuant to s 394K(5) of the CPC, which states that "[n]o leave application, and no review application, may be made in respect of a decision of an appellate court on a leave application or a review application".

18 On this basis also, I dismiss the present application summarily.

Abuse of process of court by repeat leave applications

19 This application is a clear abuse of process of the court. I observed in the Leave Judgment at [30] that all that the applicant did in the first leave application was "to re-state or re-formulate arguments that have been canvassed and rejected in MA 9309". He is doing precisely the same in the present application. Further, he is also seeking to review the decision that refused to review the appeal in MA 9309. He is therefore engaging in the kind of conduct that has been disapproved by the Court of Appeal in *Kho Jabing* by attempting repeatedly to re-open and revive concluded matters without any reasonable cause.

20 Accordingly, to curb such clear abuse of process of the court, should any applicant file more than one leave application which plainly does not warrant the exercise of the appellate court's inherent jurisdiction to review or file any application contrary to s 394K(5) of the CPC, the Supreme Court Registry should consult the relevant appellate Judge or appellate court and, if so directed, may reject such filing. This will ensure that judicial time and resources are not wasted on applications which are clearly an abuse of the process of the court. Similarly, the Prosecution will also not have to incur time and expense responding to such applications.

Conclusion

21 Under s 394H(7) of the CPC, a leave application may, without being set down for hearing, be dealt with summarily by a written order of the appellate court. Before refusing a leave application summarily, the court must consider the applicant's written submissions (if any) and may, but is not required to, consider the Prosecution's written submissions (if any): s 394H(8) of the CPC. I have

considered the application and the supporting affidavit which contains the applicant's handwritten submissions. I have also considered the Prosecution's written submissions. As explained above, the present application is clearly an abuse of process of the court. The application is therefore dismissed summarily.

Copyright © Government of Singapore.