IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 241

Magistrate's Appeal No 9038 of 2022

Between

Wham Kwok Han Jolovan

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Statutory Interpretation — Construction of statute]
[Criminal Procedure and Sentencing — Appeal]

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Wham Kwok Han Jolovan
v
Public Prosecutor

[2022] SGHC 241

General Division of the High Court — Magistrate's Appeal No 9038 of 2022/01
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28 September 2022

Vincent Hoong J:

1 The appellant, Wham Kwok Han Jolovan, was convicted after trial on one charge under s 15(2) of the Public Order Act (Cap 257A, 2012 Rev Ed) ("POA") and sentenced to a fine of $3,000, with 15 days' imprisonment in default. Having heard the parties, I dismissed the appeal against conviction and sentence and now provide my reasons.

Background facts

2 On 13 December 2018, at about 9.08am, the appellant arrived at the former State Courts ("State Courts") to attend court proceedings pertaining to Xu Yuanchen ("Xu") and Daniel De Costa Augustin ("De Costa").[1]

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[1] Agreed Statement of Facts dated 18 August 2021 ("ASOF") at [2] (Record of Proceedings ("ROP") at p 6).

3 Outside the State Courts, the appellant took out an A4 piece of paper which bore the words, "Drop the charges against Terry Xu and Daniel De Costa" from his bag. He asked a woman to photograph him while he held this piece of paper at chest-level in front of the entrance to the State Courts. The woman complied. The spot that the appellant stood at for the photograph to be taken is a prohibited area specified in Part III of the Schedule to the Public Order (Prohibited Areas) Order 2009 ("the Order").[2]

4 The appellant entered the State Courts to attend the said court proceedings before leaving at approximately 9.45am.[3]

5 Later that same day, the appellant posted the photo with the caption "'Drop the charges against Terry Xu and Daniel De Costa.' Pre-trial conference scheduled for January 8 #**insolidarity**" on his Facebook account. The Facebook post ("the Post") was public.[4]

The decision below

6 The District Judge ("the DJ") found that the appellant committed an offence under s 15(2) of the POA.

7 He held that the appellant's acts constituted an assembly under s 15 of the POA. Section 2(1) of the POA makes clear that a demonstration by a person alone for a prohibited purpose falls within the meaning of "assembly". Further, the appellant demonstrated support for the views and actions of Xu and De Costa as well as his opposition to the State in prosecuting them for their actions,

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2 ASOF at [5] (ROP at p 7).

3 ASOF at [4] (ROP at pp 6–7).

4 ASOF at [6] (ROP at p 7).

which fell within the ambit of the proscribed purposes set out under s 2(1) of the POA.[5]

8 In this connection, there was no basis to interpret "assembly" in the POA as being confined to acts which disrupt or have the potential to disrupt public order or as importing a *de minimis* requirement. Such an interpretation would read into s 2 of the POA words that are not statutorily provided for.[6]

9 The DJ was further satisfied that – even as the charge brought against the appellant was premised on constructive knowledge – the appellant had actual knowledge that to hold an assembly outside the State Courts was prohibited by an order under s 12(1) of the POA. Pertinently, the appellant had applied to hold an assembly outside the State Courts to mark "Human Rights Day" ("the Application") but was denied permission on 5 December 2018. He additionally appealed to the Minister for Home Affairs for permission to hold a "one person assembly outside the State Courts" which would "last no more than [five] minutes" ("the Appeal").[7]

10 The DJ imposed a fine of $3,000 (in default 15 days' imprisonment) on the appellant ("the Sentence"). The DJ found that the appellant had committed the offence with actual knowledge of its proscription. He carefully deliberated when, where and how to broadcast his opposition to the Attorney-General's Chambers. He also took efforts to broadcast his actions by making the Post. The appellant's antecedents for similar offences were not taken into consideration; at the time he committed the present offence, the appellant had yet to be

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5 *Public Prosecutor v Wham Kwok Han Jolovan* [2022] SGMC 2 ("First Judgment") at [8]–[9], [12] (ROP at pp 180–181, 183).

6 First Judgment at [8], [10] (ROP at pp 180–181).

7 First Judgment at [4]–[7] (ROP at pp 178–180).

convicted of the said antecedents. Finally, the DJ considered that the sentence broadly cohered with the sentence of a fine of $3,000 meted out in *Public Prosecutor v Yan Jun* [2016] SGMC 24 ("*Yan Jun*").[8]

The parties' submissions

The appellant's submissions

11 The appellant submitted as follows. First, in so far as the purpose of the POA is to regulate and govern public activities that pose a risk to public order and/or public safety, the word "assembly" in s 2(1) of the POA ought only to encompass actions which pose more than a *de minimis* risk to public order.[9] The appellant's offence should be strictly confined to his acts outside the entrance to the State Courts (*ie*, it does not extend to making the Post). This did not engender a risk to public order and hence fell beyond the scope of s 15 of the POA.[10]

12 Second, the DJ erred in finding that the appellant had actual knowledge that the assembly was prohibited by an order under s 12(1) of the POA.[11]

13 Third, the Sentence was manifestly excessive. The offender in *Yan Jun* was fined $3,000 for committing a far more egregious offence.[12]

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8 *Public Prosecutor v Wham Kwok Han Jolovan* [2022] SGMC 2 ("Second Judgment") at [6]–[15] (ROP at pp 191–197).

9 Appellant's Submissions dated 30 August 2022 ("AS") at [8]–[12].

10 AS at [13]–[14].

11 AS at [15]–[16].

12 AS at [17]–[20].

The respondent's submissions

14 The respondent contended that the appellant's proposed interpretation of "assembly" in s 2(1) of the POA read words into the statute that were not provided for and undermined the purpose of the provision. The definition of "assembly" in s 2(1) of the POA provides a functional, and not an effects-based, description of the activity. To construe "assembly" as necessitating a requirement that the gathering, meeting or demonstration poses a real or potential disruption to public order rewrites the statutory definition under the guide of statutory interpretation.[13]

15 Additionally, the appellant's interpretation of "assembly" undermines the Commissioner's discretion to grant or refuse a permit in respect of a proposed assembly under s 7(1) of the POA as well as the purpose of the permit scheme which is to pre-empt and prevent instances of public disorder.[14]

16 Next, there was no scope to construe s 15 of the POA as importing a requirement that an offender's actions posed more than a *de minimis* risk to public order and/or public safety. An offence under s 15 of the POA should be understood as an offence against society, as opposed to an offence against an individual. For such offences, harm may not be simply quantified. In any event, the appellant's actions were far from *de minimis*.[15]

17 The respondent also submitted that the appellant had actual and constructive knowledge that organising an assembly at the State Courts was prohibited by the Order. This was supported by the fact that the appellant had

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13 Respondent's Submissions dated 30 August 2022 ("RS") at [28], [30]–[37].

14 RS at [38]–[42].

15 RS at [29], [43]–[48].

unsuccessfully submitted at least eight applications for permits under the POA to hold assemblies or processions at various locations, including the State Courts, between 2010 and 2018 (which included the Application), and also made the Appeal. Alternatively, the appellant had constructive knowledge by virtue of the fact that the Order was published in the Gazette.[16]

18 Finally, the Sentence was amply justified. The appellant had actual knowledge that his acts were legally proscribed and acted with premeditation. His actions posed a threat to public order because the proposed assembly fell within the ambit of the Order. The Sentence was also broadly in line with the sentence imposed in *Yan Jun*.[17]

My decision

Section 15(2) of the POA

19 Sections 2(1) and 15(2) of the POA respectively provide:

> **Interpretation**
>
> **2.**—(1) In this Act, unless the context otherwise requires —
>
> …
>
> "assembly" means a gathering or meeting (whether or not comprising any lecture, talk, address, debate or discussion) of persons the purpose (or one of the purposes) of which is —
>
> (*a*) to demonstrate support for or opposition to the views or actions of any person, group of persons or any government;
>
> (*b*) to publicise a cause or campaign; or
>
> (*c*) to mark or commemorate any event,
>
> and includes a demonstration by a person alone for any such purpose referred to in paragraph (*a*), (*b*) or (*c*);

16 RS at [57]–[64].

17 RS at [68]–[75].

> …
>
> **Offences in prohibited areas, etc.**
>
> **15.—**
>
> …
>
> (2) A person who takes part in an assembly or a procession the holding of which he knows or ought reasonably to know is prohibited by an order under section 12(1) or 13(1) or a notification under section 13(2), as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

20 Preliminarily, parties did not dispute that a sole demonstrator can commit an offence under s 15(2) of the POA. This was, in any event, made clear by the definition of "assembly" under s 2(1) of the POA (see [19] above) as well as s 3(2) of the POA which provides that "[a] reference to a person or persons taking part in an assembly … shall include, as the case may be, a person carrying on a demonstration by himself … for any such purpose referred to in the definitions of an assembly … in section 2(1)". The crux of the present dispute was whether an assembly under s 15(2) of the POA must be a gathering or meeting which poses a risk to public order and/or public safety.

21 The purposive interpretation of a legislative provision involves three steps (*Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37]–[53]):

> (a) First, the court should ascertain possible interpretations of the provision, having regard to the text of the provision as well as the context of the provision within the written law as a whole. This is done by determining the ordinary meaning of the words and could be aided by rules and canons of statutory construction.
>
> (b) Second, the court should ascertain the legislative purpose of the statute. Legislative purpose should ordinarily be gleaned from the text

itself. Extraneous material may be considered in the situations set out under s 9A(2) of the Interpretation Act 1965 (2020 Rev Ed) ("IA").

(c) Third, the court should compare the possible interpretations of the text against the purpose of the statute. An interpretation which furthered the purpose of the written text was to be preferred to one which did not.

22 Applying these principles, I found that an "assembly" under s 15(2) of the POA is not limited to gatherings or meetings which pose a risk to public order and/or public safety. It follows that there was no basis to interpret s 15(2) of the POA as requiring an individual's actions to pose more than a *de minimis* risk to public order and/or public safety.

23 To begin, the plain wording of the definition of "assembly" under s 2(1) of the POA makes no mention of a requirement for a gathering or meeting to pose a risk to public order and/or public safety. Instead, s 2(1) of the POA expressly defines an "assembly" with respect to its purpose. If the purpose or one of the purposes of a gathering or meeting falls within the statutorily enumerated purposes, that gathering or meeting constitutes an assembly. The appellant's proposed interpretation of "assembly" reads into the provision limits that are not linguistically provided for. For this reason, I found that it was not a possible interpretation of "assembly" (as the word is deployed in the POA) and therefore falls at the first step of the *Tan Cheng Bock* framework.

24 The purpose of the POA, as revealed in its name and its long title, is to preserve and maintain public order (*Wham Kwok Han Jolovan v Public Prosecutor* [2021] 1 SLR 476 ("*Jolovan Wham (CA)*") at [39]). But this did not, in any way, advance the appellant's case. Purposive interpretation, while an important and powerful tool, is not a basis for rewriting a statute. Judicial

interpretation is generally confined to giving a statutory provision a meaning that its language can bear and must be done with a view toward determining the provision's purpose and object as reflected by and in harmony with the express wording of the legislation (*Tan Cheng Bock* at [50]).

25 The parliamentary debates on the Public Order Bill (Bill No 8/2009) ("the Bill") – through which Parliament promulgated the Public Order Act 2009 (Act 15 of 2009) – confirmed that s 2(1) of the POA sets out a teleological definition of an "assembly". During the second reading of the Bill, then Second Minister for Home Affairs, Mr K Shanmugam explained that under the POA, "cause-based activities are regulated" and the Act "applies only to cause-based activities". Likewise, then Member of Parliament for Hong Kah Group Representation Constituency, Mr Alvin Yeo, observed that the POA "provides a separate framework for regulating assemblies and processions which are organised for the purpose of promoting a cause or campaign" and it is "the crucial definition of the purpose behind the activity, which makes it cause-related and hence subject to regulation" (see *Singapore Parliamentary Debates, Official Report* (13 April 2009) vol 85 at cols 3664, 3679–3680, 3744). In delineating what constitutes an "assembly" under the POA, Parliament's focus was on the purpose animating a gathering or meeting, rather than its effects.

26 Finally, to read a requirement that a gathering or meeting poses a risk to public order and/or public safety before it may be considered an assembly sits uncomfortably with the permit regime set out in ss 5 to 11 of the POA. I am cognisant that the permit regime was not directly relevant to the appellant's offence; his offence under s 15(2) of the POA concerned an assembly in a public place where the holding of public assemblies is prohibited by order published in the *Gazette* (see s 12 of the POA). That said, the POA adopts a single definition of "assembly" that is employed in the rest of the act, such as in

s 16(1)(*a*), which proscribes the organising of a public assembly or public procession in respect of which no permit has been granted or no such permit is in force. Hence, the extent to which the appellant's proposed interpretation of "assembly" undermines the operation and logic of the permit regime was, in my view, a relevant consideration.

27 In this regard, the POA regulates which assemblies require a permit and the grounds for refusing to grant such a permit where a permit is required (*Jolovan Wham (CA)* at [16]). Section 7(2)(*a*) of the POA provides that upon receiving any notice and application under s 6 of the POA for a permit in respect of a proposed public assembly or public procession, the Commissioner of Police ("the Commissioner") may refuse to grant a permit if he has reasonable ground for apprehending that the proposed assembly or procession may occasion public disorder, or damage to public or private property. The word "occasion" – particularly when deployed in conjunction with the clause "damage to public or private property" – suggests that the Commissioner has to consider whether the proposed assembly may *result in* public disorder. If so, then the appellant's proposed interpretation leads to an illogical position, namely, that while an "assembly" invariably causes public disorder, the Commissioner must consider if the assembly may result in public disorder in deciding whether to refuse to grant a permit.

28 There was accordingly no scope to interpret an "assembly" under the POA as being limited to a gathering or meeting which poses a risk to public order and/or public safety, much less one which, additionally, poses more than a *de minimis* risk to public order and/or public safety.

Whether the appellant had actual knowledge that holding the assembly was prohibited by an order under s 12(1) of the POA

29 Moving on, I deal with the appellant's contention that the DJ erred in finding that the appellant had actual knowledge that holding the assembly was prohibited by an order under s 12(1) of the POA.

30 The appellant's submissions in this regard were two-fold. It should be recalled that the Commissioner had, on 5 December 2018, denied the appellant permission to hold up placards outside the State Courts for five minutes on 9 December 2018 to mark Human Rights Day and raise awareness of human rights issues (see [9] above). The appellant first contended that his acts which formed the subject of the present charge were "a far cry" from what he planned and was denied permission to do on 9 December 2018 and he thus did not know that he required a permit to perform the former acts. Second, the appellant submitted that it was not unreasonable for him to believe that no permit was required for taking a "quick photograph" outside the State Courts.[18]

31 The appellant's submissions were, however, misdirected. His offence under s 15(2) of the POA related to his knowledge that the assembly was prohibited by an order under s 12(1) of the POA. This was distinct from the question of whether the appellant believed that he did not require a permit to perform the acts subject of the charge. The appellant failed to show how his purported belief that he did not require a permit to perform the acts which formed the subject of the charge impinged upon the DJ's finding that he knew the assembly was prohibited by an order under s 12(1) of the POA, which was the relevant inquiry for present purposes.

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[18] AS at [15]–[16].

The appeal against sentence

32 Finally, I consider the appeal against sentence. The appellant claimed that the Sentence was manifestly excessive because the offender in *Yan Jun* was ordered to pay a fine of the same amount even though he committed "a far more egregious offence".[19]

33 *Yan Jun* involved an offender who committed two offences under the POA, one under s 15(2) and the other under s 16(2)(*a*). In respect of the former offence, the offender stood directly opposite the main gate of the Istana and held two placards, which broadly disparaged judicial independence in Singapore, above his shoulders for approximately four minutes. He did so even though his application for a permit was denied, and despite being earlier informed by the police that the Istana was a prohibited area under the Order.

34 The appellant contended that he ought to have received a lower fine than that meted out in *Yan Jun* as the Application pertained to a "materially different event" and he was not "expressly put on notice that the State Courts was a prohibited area" under the Order.[20]

35 It must be remembered, however, that the role of the appellate court differs from that of a court sentencing an offender at first instance. Appellate intervention on the ground that a sentence is manifestly excessive is only warranted when the sentence "requires substantial alterations rather than minute corrections to remedy the injustice" (*Public Prosecutor v Siew Boon Loong* [2005] 1 SLR(R) 611 at [22]). Additionally, due to the extraordinary range of possible factual circumstances, attempts to narrowly distinguish sentencing

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19 AS at [17]–[20].

20 AS at [18].

precedents are ordinarily not very helpful and may sometimes lead to missing the wood for the trees (*Public Prosecutor v Leong Soon Kheong* [2009] 4 SLR(R) 63 at [32]).

36 The threshold for appellate intervention was not met in the present case. Even if I disregarded the Post, I found the Sentence to be supported by the subject-matter of the assembly, namely, to express opposition to the Public Prosecutor's exercise of prosecutorial discretion and that the appellant intended for the assembly coincide in time and place with Xu and De Costa's court proceedings. Moreover, the DJ declined to place weight on the fact that the appellant had committed the present offence while on bail and under investigations for offences under s 16(1)(*a*) of the POA when this was, in my view, an aggravating factor that could have featured in the sentencing calculus. The DJ declined to do so on the basis that there was "no final definitive superior court ruling … as to the proper applicability of the POA" at the time the appellant committed the present offence.[21] This, however, elided consideration of the fact that specific deterrence was not the only justification for treating offending while on bail as aggravating. An additional reason for so doing is to "send out an important signal and deter similarly minded individuals from abusing the conditional liberty that had been accorded to them" (*Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [60]).

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21 Second Judgment at [12]–[13] (ROP at pp 194–196).

Conclusion

37 For the above reasons, I dismissed the appeal against conviction and sentence.

Vincent Hoong
Judge of the High Court

Eugene Thuraisingam, Suang Wijaya and Johannes Hadi (Eugene Thuraisingam LLP) for the appellant;
Deputy Attorney-General Tai Wei Shyong, Jane Lim and Niranjan Ranjakunalan (Attorney-General's Chambers) for the respondent.