

Public Prosecutor v Lam Chen Fong
[2002] SGHC 160

Case Number : CC 40/2002
Decision Date : 26 July 2002
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Tan Siong Thye and Jeanne Lee (Deputy Public Prosecutors) for the Public Prosecutor; Subhas Anandan (briefed) and Kesavan Nair (Harry Elias Partnership) for the accused
Parties : Public Prosecutor — Lam Chen Fong

Criminal Law – Offences – Criminal breach of trust as agent – Degree of offender's culpability – Severity of offender's sentence – Amount dishonestly misappropriated – ss 214 & 409 Penal Code (Cap 224)

Criminal Law – Offences – Corruption – Confiscation of benefits – Charges involving transfer of property representing benefits of criminal conduct – s 47(1)(b) Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Ed)

Criminal Procedure and Sentencing – Sentencing – Cases involving multiple charges – Relevant factors – Unscrupulous scheme involving large number of victims – Aggravating factors – Mitigating factors – Court having option of passing life imprisonment – Appropriate sentence

JUDGMENT

GROUNDS OF DECISION

1 The Accused pleaded guilty to 22 charges, comprising 20 charges of criminal breach of trust as an agent under section 409 Penal Code, one charge under section 47(1)(b) Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act ("Confiscation of Benefits Act") involving the transfer of property which directly represented the benefits of his criminal conduct and one charge of agreeing to give gratification to another person to screen himself from legal punishment, an offence under section 214 Penal Code.

2 He also admitted the offences in 1,187 other charges under section 409 Penal Code, one charge under section 47(1)(b) Confiscation of Benefits Act, one charge under section 214 Penal Code and one charge under section 25(2) Money Changing and Remittance Businesses Act and consented that these offences be taken into consideration for the purpose of sentence.

3 Section 409 Penal Code provides for imprisonment for life or for up to 10 years and a discretionary fine. Section 47(6) Confiscation of Benefits Act provides for a fine not exceeding \$200,000 or for imprisonment for a term not exceeding seven years or both. The relevant limb in Section 214 Penal Code provides for imprisonment of up to three years and a discretionary fine.

THE STATEMENT OF FACTS

4 The Accused and his 75 year old grandmother were partners in Wen Long Money Changer operating in City Plaza, Geylang Road. The business was managed solely by the Accused. The business was originally involved in money changing only. On 8 April 2000, it expanded its scope to include money remittance services for Malaysian Ringgit, Indonesian Rupiah and Chinese Renminbi when it was issued a remittance licence by the Monetary Authority of Singapore.

5 A customer who wished to remit money overseas would enquire about the relevant exchange rate and, if it was acceptable to him, would hand over the money to the Accused who would record the details of the transaction and issue him a remittance receipt. Such receipts would acknowledge the amount of Singapore dollars received from the customer and the exchange rate used.

6 However, the Accused did not remit himself but conducted all remittance transactions through other licensed remittance agents. He would fax Wen Long's remittance application forms to such agents and deposit the cash collections directly into the agents' bank accounts. The agents would then remit the money on behalf of Wen Long via telegraphic transfers and other means to the overseas beneficiaries.

7 The Accused was a compulsive gambler who betted heavily on horses, soccer results, 4-Digits and Toto. His losses kept mounting and, by May 2001, his gambling debts were more than half a million dollars. In desperation, the Accused decided to use the cash collected by Wen Long to settle his gambling debts. To do this, he had to generate a higher volume of business so that there would be more cash collections.

8 In June 2001, the Accused devised the following scheme to attract business to Wen Long. He offered exchange rates which were better than those offered in the market. At the material times, the market exchange rates for Renminbi were between RMB 4.46 and 4.5 to S\$1 but the Accused's rates were between RMB 4.8 and 4.95 to S\$1. He also waived the S\$20 commission for each transaction. Customers of Wen Long therefore got more RMB for their S\$ for remittance than if they were to use other agents. Naturally, a large number of Chinese workers from the People's Republic of China ('PRC') flocked to Wen Long to remit their money to their homeland.

9 Between June 2001 and January 2002, money was pouring into Wen Long at the daily rate of between S\$300,000 and S\$500,000. The Accused had to engage three persons to help him receive this daily stream of cash. However, he decided the exchange rate to offer the customers and he issued the receipts to them. The receipts would state the market exchange rate instead of the higher one offered by him. They would therefore state that the cash in S\$ received was more than that actually handed over to Wen Long. He was afraid that if the actual exchange rate offered by him was reflected in the receipts, his auditors or the Monetary Authority of Singapore might ask him to explain how he was able to sustain the high exchange rate. He also dealt personally with the remittance agents that Wen Long used.

10 The Accused knew that the above scheme would result in exchange rate losses for Wen Long. He therefore imposed the condition that remittances would only be effected one month from the date of collection from the customers instead of the usual three to four working days from the date of collection. This meant that the beneficiaries would receive the cash later. This would enable the Accused to roll-over the funds. He would use the current collections for himself and then use subsequent collections to pay for the earlier collections when the remittance date was due. By this 'Rob Peter to pay Paul' method, he appeared to be fulfilling his obligations to his customers and could therefore avoid detection. He would also use a black marker to obliterate the date on the remitters' application forms before faxing them to his agents. This was done so that the agents would not become suspicious about the delay in the transactions.

11 The Accused was thus using part of the current cash collections to fulfil his earlier obligations and spending the rest on his gambling addiction and a lavish lifestyle. By September 2001, he had used about S\$3 million belonging to his customers to settle his gambling debts. Between June 2001 and January 2002, he was spending an average of some S\$250,000 each weekend on bets placed here as well as in Malaysia and in Batam. He also began to frequent nightspots where he would spend lavishly on himself and his friends and give large tips to those serving and entertaining him. In January 2002, he asked a friend to rent an apartment in a condominium in Geylang. He paid the rental and furnished the apartment. He brought nightclub hostesses there.

12 The Accused had no other source of income. His extravagant lifestyle and his gambling addiction were funded solely by the money misappropriated from Wen Long's cash collections.

13 On 23 January 2002, the Accused was told by one Ivan Teo that a few PRC nationals who were customers of Wen Long had lodged police reports against him as their money was not received in the PRC after the one-month contractual period. Ivan Teo suggested that the Accused leave Singapore for Malaysia, assuring him that he would be able to arrange transport and obtain a Malaysian identity card for him.

14 Later that day, the Accused met up with Ivan Teo and one Jimmy Ang. He agreed to pay S\$100,000 to Ivan Teo and S\$3,000 to Ivan Teo's informer. He also agreed to pay Jimmy Ang S\$25,000 to bring him to the hiding place in Malaysia.

15 In the morning of 26 January 2002, the Accused returned to Wen Long to take the cash collections amounting to S\$582,000. He handed the said sum to one Tai Choon Yew and instructed him to pay Ivan Teo and Jimmy Ang as agreed, to pay S\$100,000 to settle his gambling debts and to hand over S\$300,000 to his wife. The remaining amount was entrusted to Tai Choon Yew for safekeeping. The Accused also took RM12,000 from Wen Long with him. He left two notes written in Chinese addressed to his family stating his shame and remorse. That night, he fled to Malaysia as arranged.

16 His family persuaded him to return and he did so on 28 January 2002. That same day, a Chinese foreign worker lodged a report at the Bedok Police Station stating that money she had entrusted to Wen Long on 21 December 2001 to remit to her family in the PRC was not received by her family. The Accused surrendered himself at the Bedok Police Station on 29 January 2002.

17 The transfer of the S\$582,000 to Tai Choon Yew formed the subject matter of the charge under the Confiscation of Benefits Act while the agreement to pay Ivan Teo the total of S\$103,000 in consideration of the arrangement for the Accused to leave the country and thus be screened from legal punishment gave rise to the charge under section 214 Penal Code.

18 A total of S\$905,398.93 was recovered by the Commercial Affairs Department. Out of this sum, S\$26,032.80 came from the surrender of four insurance policies by the Accused.

ANTECEDENTS

19 The Accused had no previous criminal record.

THE PROSECUTION'S SUBMISSIONS ON SENTENCE

20 The Prosecution submitted that this case called for "a severe sentence to show the Court's abhorrence of the nefarious deeds of the Accused". The 30 year old Accused had defrauded over a thousand persons, most of whom were foreign workers, of some S\$8.7 million of their hard-earned money. The money was taken by him "purely to sustain his hedonistic lifestyle and gambling habit". The amount recovered by the investigators meant that the victims would receive only about ten cents for every dollar lost. The crimes were committed with premeditation and over some seven months. The Accused had also taken steps to avoid detection of his fraudulent conduct.

21 Five victim impact statements were tendered. In these statements, the foreign workers involved spoke about families in need waiting for the money that should have been remitted to take care of medical, housing, educational and other family expenses. Some of the workers received their salaries once a year according to their contracts and had therefore lost a whole year's wages.

22 Various cases decided here and elsewhere were cited for my guidance. The Gemini Chit Fund case in 1973, described by Choor Singh J as the "swindle of the century", was one of them. There Abdul Gaffar Mohamed Ibrahim, the Managing Director of Gemini Chit Fund Corporation Ltd, pleaded guilty to three charges of criminal breach of trust of S\$3.2 million under section 409 Penal Code and was sentenced to life imprisonment. There were 40 to 50 thousand members of the public participating in the chit fund and the loss was estimated at S\$50 million.

23 The Prosecution in the present case argued that the Accused should receive in total more than the maximum that the District Court may impose in any one case, that is, 14 years imprisonment. That was the reason for invoking section 186(2) Criminal Procedure Code to have this case transferred to the High Court. I was urged to order more than two of the imprisonment terms to run consecutively as there is no rule precluding the Court from making such an order (see *Maideen Pillai v PP* [1996] 1 SLR 161). The Prosecution left it to the Court to decide what the aggregate term of imprisonment ought to be.

THE MITIGATION

24 The two notes that the Accused left for his family before he fled the country showed the pain, shame and remorse that he felt. Having made good his escape, he returned soon thereafter on his own volition after speaking to his family and surrendered himself. He was forthright and complete in his disclosure of all his transactions and gave the investigators the relevant documents and the identities of the persons involved.

25 The Accused pleaded guilty at the first available opportunity and admitted all the other charges taken into consideration. He was also a first offender.

26 He did not set out to misappropriate the workers' money from the beginning. When his gambling became a "desperate compulsion" and he sunk deeper in debts and ran out of people to borrow money from, he decided to "borrow" money from Wen Long's customers by the roll-over scheme described earlier.

27 The Accused also surrendered four insurance policies before their maturity dates for S\$26,032.80 to help pay back the victims. He "had not squirreled away any money for later use or concealed any part of it".

28 I was urged not to pass a crushing sentence thereby depriving him of all hope.

THE SENTENCES

29 Before I sentenced the Accused, I said the following :

"1. I begin by repeating what Chan Sek Keong J said in *Wong Kai Chuen Philip v PP* [1991] 1 MLJ 321 at 323, that "in an offence like criminal breach of trust, it is a matter of common sense that, all other things being equal, the larger the amount dishonestly misappropriated the greater the culpability of the offender and the more severe the sentence of the court." The Accused here embezzled some \$8.768 million within three months. The total amount involved in all the charges (ie those proceeded with and those taken into consideration for the purpose of sentence) is not the largest in the history of financial crime but it is nonetheless a very substantial sum. So far, approximately \$905,000 have been recovered, constituting only slightly more than 10% of the total loss.

2. This is not even a case of an offender coming across a huge sum of money by chance or in the course of his work and, being in dire need, not being able to

resist the temptation to help himself to some of it. The Accused here unleashed a n unscrupulous scheme on the unsuspecting foreign workers by offering unrealistically high exchange rates to create an unceasing stream of cash to feed his unmanageable gambling addiction and his uncontrollable avarice while taking pains to ensure that his misdeeds remain undetected. He was the writer, director and lead actor in this unmitigated tragedy. How do we sympathize with him? Let us not count the ways because there is none.

3. The Accused's criminal conduct has claimed more than a thousand victims. These are people who have come to our country to work and to earn an honest living for themselves and for those they care for in their homeland. While they laboured, the Accused plundered, what they painstakingly gathered, he wantonly scattered, what they saved, he squandered. These workers' anguish is all the more severe as the money they lost represents, for some of them, a whole year's wages and is badly needed by their dependants. The consequences of his crimes are far-reaching and adversely affect a great number of people.

4. The Accused has also done a great disservice to our country. A country's reputation may be soiled when its locals take dishonestly the spoils of the foreigners' toils.

5. The Accused has pleaded guilty and has saved time and expense but as I have said in *PP v Teo Cheng Kiat* [Criminal Case 42 of 2000], such a plea in the face of overwhelming documentary evidence does not carry the same weight it would have in cases which may be more difficult for the Prosecution to prove. The Accused is also a first offender only in the sense that he was not caught and convicted earlier for the many incidents of misappropriation of the workers' funds and, like Teo Cheng Kiat, "he has set a dubious record in the criminal annals upon his dramatic first entry". He did flee the country when he realized that his arrest was imminent but, to his and his family's credit, he returned voluntarily soon thereafter, surrendered himself and admitted his wrongdoings to the police. He also assisted the authorities in their investigations.

6. When Choor Singh J sentenced Abdul Gaffar Mohamed Ibrahim in the Gemini Chit Fund case in 1973 to life imprisonment for criminal breach of trust, that effectively meant a maximum sentence of 20 years. Since *Abdul Nasir bin Amer Hamsah v PP* [1997] 3 SLR 643, life imprisonment means incarceration for the remaining natural life of the prisoner. The \$3.2 million involved in the Gemini Chit Fund case 30 years ago would obviously be equivalent to a much higher amount today. The loss was estimated to be around \$50 million then in any event. The number of victims there was also considerably higher. Until this spate of offences, the Accused had no criminal record. Whether his case will be regarded as the "swindle of the (new) century" remains to be seen but I do not think any arguments for the maximum sentence here would be too compelling and, indeed, the Prosecution has not suggested that life imprisonment would be appropriate here.

7. A good analogy to this case is *Teo Cheng Kiat's* case which concerns criminal breach of trust under section 408 Penal Code, a provision which carries a maximum imprisonment term of seven years to which a fine may be added. There, I sentenced Teo to six years imprisonment in respect of each of the ten

charges proceeded with and ordered four of the sentences to run consecutively, making a total of 24 years imprisonment. I note of course that the total amount involved in that case was about \$35 million (of which some \$21 million were recovered) and that the defalcation there covered a 13 year span. There was however only one corporate victim involved and its financial soundness was not adversely affected.

8. What really matters in cases of multiple charges such as this is the aggregate term of imprisonment derived from the number of consecutive sentences. In view of the many victims here, it is appropriate to order more than two imprisonment terms to run consecutively. In the circumstances, I sentence Mr Lam Chen Fong to seven years imprisonment in respect of each of the section 409 Penal Code charges, three years imprisonment on the charge under section 47(1)(b) Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act and one year imprisonment on the charge under section 214 Penal Code. Three of the sentences for the section 409 charges and the one year imprisonment term for the section 214 charge are to run consecutively with effect from 29 January 2002 while the rest of the sentences are to run concurrently with them, making an aggregate sentence of 22 years imprisonment."

Sgd:

TAY YONG KWANG

JUDICIAL COMMISSIONER