# Comfort Management Pte Ltd v Public Prosecutor
# [2003] SGHC 16

**Case Number** : MA 200/2002

**Decision Date** : 04 February 2003

**Tribunal/Court** : High Court

**Coram** : Yong Pung How CJ

**Counsel Name(s)** : Lim Chong Boon (Albert Teo & Lim) for the appellant; G Kannan (Deputy Public Prosecutor) for the respondent

**Parties** : Comfort Management Pte Ltd — Public Prosecutor

*Immigration – Employment – Foreign worker – Whether employing foreign worker otherwise than in accordance with conditions of work permit a strict liability offence – Employment of Foreign Workers Act (Cap 91A, 1997 Rev Ed) ss 5(3), 22(2)*

*Statutory Interpretation – Construction of statute – Purposive approach – Principles of statutory interpretation – Interpretation Act (Cap 1, 1999 Rev Ed) s 9A(1)*

**The Charge**

1 The appellant, Comfort Management Pte Ltd ('the company'), claimed trial to a charge that it had employed a foreigner, one Krishnan Rajangam ('Krishnan'), otherwise than in accordance with condition 2(d) of his work permit, namely, by authorising him to drive the company vehicles GM 2100E, YF 9957C and YG 909X outside construction sites in the course of his employment, and had thereby committed an offence under s 5(3) of the Employment of Foreign Workers Act (Cap 91A) ('the Act') which was punishable under s 22(2) of the Act.

2 Section 5(3) of the Act provides that "no person shall employ a foreign worker otherwise than in accordance with the conditions of the work permit". Under s 22(2) of the Act, a s 5(3) offence is punishable by a fine not exceeding $5,000.

3 After considering the submissions and evidence before her, the district judge convicted the company of the charge and imposed a fine of $3,500. The company appealed against its conviction. After hearing arguments from counsel, I dismissed the appeal and now set out the grounds for my decision.

**Undisputed facts**

4 The facts relevant to this appeal were relatively straightforward. Krishnan, an Indian national, was an employee of the company from April 2000 to April 2002. In order to employ him, the company, through its director, one Lim Fatt Seng ('Mr Lim'), submitted to the Ministry of Manpower ('MOM') an application form for prior approval to employ 10 Indian nationals as 'non-traditional source ('NTS') construction workers'. Certain conditions for the employment of a NTS construction worker were set out in the application form for prior approval, the material one being condition 2(d) which provided that:

> 2 Individual Work Permit Application

> The employer shall submit individual Work Permit applications for each NTS construction worker to be employed … The NTS construction workers recruited by employer shall be:
>
> …
>
> (d) Engaged only in the construction activities listed in Annex A of this document (Note: construction activities do NOT include driving outside construction site).

Annex A listed several categories of construction activities such as 'General Building Construction and Civil Engineering Works', 'Road Works' and 'Specialised Installation Activities'. Mr Lim signed a declaration in the prior approval application form that the company was engaged in one or more of the construction activities listed in Annex A, and that all the NTS construction workers employed by the company "shall be solely engaged in these construction activities and at our construction sites". Mr Lim also declared that the company would comply with the work permit conditions.

5 After prior approval was granted by MOM, Mr Lim applied for, and obtained, an individual work permit for Krishnan to work as a building electrician. Krishnan's primary responsibilities were to carry out works relating to the installation, commissioning and testing of air-conditioning systems.

6 Krishnan held a valid driving license. It was not disputed that the company had authorised him to drive the company vehicles, referred to in the charge. The purpose and extent to which the company had authorised Krishnan to drive the company vehicles were however disputed and would be reverted to below.

**The prosecution's case**

7 The prosecution conceded that Krishnan was not working primarily as a company driver. His primary responsibilities remained that of a building electrician and this complied with condition 2(d) of his work permit. The prosecution contended, however, that condition 2(d) should be interpreted as prohibiting all instances of driving outside construction sites in the course of a foreign worker's employment. The crux of the case was hence whether the company had authorised Krishnan to drive in the course of his employment. The fact that the company was employing Krishnan primarily as a building electrician, and not as a company driver, was irrelevant to the charge.

**The defence**

8 The company raised three arguments in defence. First, the prosecution's interpretation of condition 2(d) was wrong. Condition 2(d) was ambiguous and should therefore be construed strictly in favour of the company. Secondly, even on the prosecution's interpretation of condition 2(d), the company was nevertheless not in breach of that condition. Thirdly, the company did not possess the *mens rea* for the offence.

**The trial judge's findings**

9 The trial judge agreed with the prosecution's interpretation of condition 2(d) of Krishnan's work

permit. The judge held that condition 2(d) was not ambiguous and that it prohibited Krishnan from driving outside a construction site in the course of his employment. However, driving in his personal capacity was not prohibited.

10 The judge then considered whether the company had breached condition 2(d). The company conceded that it had authorised Krishnan to transport work equipment (used by his co-workers and himself) between constructions sites and that it had paid for all expenses (including parking and petrol charges) relating to those vehicles. On these facts alone, the judge was prepared to find that the company had authorised Krishnan to drive in the course of his employment and had therefore breached condition 2(d).

11 The judge also went further to consider the disputed scope of driving, namely, whether the company had also authorised Krishnan to ferry co-workers in those vehicles. Krishnan testified that Abdul Razak Syed Mubarak ('Syed'), an operations manager of the company who was responsible for the allocation of company vehicles, had instructed him to ferry co-workers between construction sites once or twice every month. Krishnan further testified that Syed had also instructed him to pick up one Kesavan, a co-worker, every morning on his way to work. Syed was then called to testify as a prosecution witness. In his examination-in-chief, he denied giving these instructions to Krishnan. Upon cross-examination, however, he admitted that Krishnan had picked up Kesavan with his knowledge and consent. The company's defence, as relevant to this issue, was that it did not authorise Krishnan to ferry his co-workers at all. The judge, after careful consideration of the evidence and the demeanour of the witnesses, rejected both Syed and the company's testimonies. She believed Krishnan's testimony and found that the company had not only authorised Krishnan to use the company vehicles to transport the work tools (which was conceded), but also his co-workers. She held that this further strengthened the prosecution's case that the company had authorised Krishnan to drive in the course of his employment. The *actus reus* for a s 5(3) offence was accordingly made out.

12 The judge next considered whether the company had possessed the requisite *mens rea* for a s 5(3) offence. No arguments were presented as to whether *mens rea* is required for the offence, or the type of *mens rea* that must be proved. The parties instead proceeded on whether the company had knowledge of the existence of condition 2(d). The judge found that the company had such knowledge and ruled that the prosecution had proven the presence of *mens rea* beyond a reasonable doubt.

13 The judge accordingly convicted the company of the charge and imposed a fine of $3, 500, giving weight to the fact that it was a first offender.

**Issues arising upon appeal**

14 The issues which arose upon appeal were similar to those which had arisen during the trial. First, whether the trial judge was correct in her interpretation of condition 2(d) of the work permit. Secondly, whether the company had breached condition 2(d) of the work permit. Thirdly, whether the company had possessed the requisite *mens rea* for the offence.

**First ground of appeal : interpretation of condition 2(d)**

**(i) Applicable principles of interpretation**

15 The applicable principles in the interpretation of executive orders and conditions (including work permits) are the same as those applied in the interpretation of primary legislation: *Forward Food Management Pte Ltd v PP* [2002] 2 SLR 40. In that case, I discussed the relevant authorities and summarised the principles to be applied in interpreting penal statutory provisions as follows:

> The proper approach to be taken by a court construing a penal provision is to first consider if the literal and purposive interpretations of the provision leave the provision in ambiguity. It is only after these and other tools of ascertaining Parliament's intent have been exhausted, that the strict construction rule kicks in in the accused person's favour [at para 26].

It is clear from the passage quoted above that the strict construction rule is a rule of last resort to be applied only if 'literal' and 'purposive' interpretations of a provision as well as other rules of construction still leave the provision in ambiguity.

16 While the purposive and literal interpretations of a statutory provision often coincide, this is not always the case. Where they conflict, it is settled law that a purposive interpretation should be adopted over a literal interpretation that does not support the purpose and object of the written law, even if the wording of the statute is not ambiguous or inconsistent: *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201 and *Kenneth Nicholas v PP* [MA/210/2002]. This follows from the clear terms of s 9A(1) of the Interpretation Act (Cap 1) which reads:-

> Purposive interpretation of written law and use of extrinsic materials
>
> 9A. – (1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

17 Section 9A(1) is also in line with the prevailing common law position which was stated most succinctly by Lord Simon of Glaisdale in *Maunsell v Olins & Anor* [1975] 1 All ER 16 at 25:

> …In statutes dealing with ordinary people in their everyday lives, the language is presumed to be used in its primary ordinary sense, unless this stultifies the purpose of the statute, or otherwise produced some injustice, absurdity, anomaly or contradiction, in which case some secondary ordinary sense may be preferred so as to obviate the injustice, absurdity, anomaly or contradiction, or fulfil the purpose of the statute.

This passage undoubtedly also represents the position in Singapore. Although s 9A(1) of the Interpretation Act makes reference only to statutory purpose and not to concepts such as 'injustice', 'absurdity', 'anomaly' or 'contradiction' which appear in the common law, it is obviously desirable that such concepts be incorporated into our jurisprudence. There is no reason why a statutory provision should be rendered unjust, absurd, anomalous or contradictory when some other interpretation is possible.

18 I would emphasise at this juncture that the approach in both s 9A and the common law assume that the statutory provision in question is reasonably capable of more than one construction: in such a case, the meaning which promotes the statutory purpose should be chosen. However, if the word is capable of one meaning only, then the courts should not impose another meaning, even if the latter, in the opinion of the courts, will better promote the statutory purpose: per Lord Reid in *Jones v Director of Public Prosecutions* [1962] AC 635 at 662. Otherwise, that will amount to performing the legislative function. A line must still be drawn between purposive interpretation and law-making.

19 For the purposes of the present appeal, I would summarise the relevant principles of statutory interpretation discussed above as a three-step test:

> (i) Words or phrases in statutory provisions should generally be given their literal meanings (the 'literal interpretation' rule).
>
> (ii) However, if the literal meaning would not promote the statutory purpose, then some other secondary meaning which promotes the statutory purpose should be chosen (the 'purposive interpretation' rule).
>
> (iii) If the provision is still ambiguous after applying the 'literal interpretation' and the 'purposive interpretation' rule, then the courts should prefer an interpretation which favours the accused (the 'strict construction' rule).

The above principles are of course not meant to be exhaustive, given the myriad of situations that the courts can be called upon to interpret provisions as well as the many different types of provisions. Rather, they are intended to provide workable guidelines on the facts of the present appeal.

**(ii) Application of the principles to condition 2(d)**

20 I then applied the principles set out above to the interpretation of condition 2(d). The company argued that condition 2(d) was ambiguous in that it was capable of five different meanings and, as such, the strict construction rule should be applied in its favour. It contended that the judge had erred in holding that condition 2(d) was not ambiguous. The five different meanings contended by the company were as follows:

> (i) Since Annex A allowed NTS workers to carry out construction activities which required driving heavy vehicles (such as road building, earth works, dredging etc) as well as those which did not require driving heavy vehicles, condition 2(d) could mean that only foreign workers who were required to drive heavy vehicles inside construction sites were prohibited from driving outside construction sites. Since Krishnan had only been working as a building electrician which did not require driving heavy vehicles inside construction sites, he was hence not prohibited from driving outside construction sites.
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> (ii) The work permit holder was not permitted under any circumstances (whether in the course of employment or otherwise) to drive outside construction sites.
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> (iii) The work permit holder could drive outside construction sites if he was merely driving to and from home and office and between construction sites.

(iv) The work permit holder could drive outside construction sites only in his personal and private capacity.

(v) The work permit holder could not drive outside construction sites if such driving was in the course of his employment.

21 Meaning (v), as stated above, was the interpretation applied by the judge. In my opinion, there was no ambiguity in condition 2(d) at all and the judge arrived at the correct interpretation. A literal reading of condition 2(d) may appear to prohibit all forms of driving outside construction sites and as such, meaning (ii) seems to be the most appropriate interpretation. However, meaning (ii) can be easily dismissed once the purpose behind s 5(3) and condition 2(d) is taken into account. One of the purposes behind s 5(3) and condition 2(d) is clearly to prevent employers from illegally deploying foreign workers to other employment sectors, other than those stated in the work permit. It should also be noted that the provisions are intended to govern employers and employees in their professional relationship only. There was hence no reason to prohibit Krishnan from driving in his personal capacity, such as a weekend trip to Sentosa or an evening visit to a supermarket.

22 Similarly, the statutory purpose would be at least partially defeated if meaning (i) was applied because it would allow some categories of constructions workers, that is, those not driving heavy vehicles inside construction sites as part of their duties, to be deployed illegally to drive company vehicles outside construction sites.

23 Meaning (iii) was clearly a desperate attempt to interpret condition 2(d) so as to exonerate the company and found no support either on a literal or purposive reading of the condition. Only meanings (iv) and (v) were left which were really the converse of each other and made no difference to this appeal whether one or the other was adopted. It was clear that meaning (v) (or meaning (iv) for that matter), in prohibiting only driving in the course of Krishnan's employment, best promoted the statutory purpose of preventing employers from deploying foreign workers to sectors not authorised by their work permits. Since purposive interpretation yielded a clear meaning here, there was no occasion for me to apply the strict construction rule in favour of the company.

24 The company further raised two arguments against the adoption of meaning (v). The first argument was that such an interpretation of condition 2(d) would be impractical as it meant that Krishnan would either have to take public transport or that the company would have to hire a driver to ferry him and the work tools between job sites. This appeared, however, to be exactly what s 5(3) and condition 2(d) were intended to achieve, that is, NTS workers could only be deployed to do construction work as defined in Annex A, and if companies needed someone to drive company vehicles, then they should look for other sources of labour. Certainly many companies would prefer to incur lower business costs and if they could have their way, would probably relish requiring NTS construction workers to also drive their vehicles, clean their offices or deliver their goods. There were however other more compelling policy considerations at play here and the companies would have to adapt accordingly.

25 The second argument was that meaning (v) would lead to the 'anomaly' that work permit holders could not 'drive', but could 'ride' (say, a motorcycle), outside construction sites. I found no merit in that argument. In the first place, condition 2(d) may also prohibit work permit holders from riding in the course of their employment, since driving was only cited there as an example of what did not fall

under the categories of construction activities listed in Annex A. Secondly, even if condition 2(d) did not prohibit riding outside construction sites, it was entirely plausible that the MOM might think it desirable from a policy point of view that the 'driving' sector, but not the 'riding' sector, should be protected from an influx of NTS workers.

**Second ground of appeal : whether the company had breached condition 2(d) of the work permit**

26 The next issue here was whether the company had breached condition 2(d) of the work permit. Following the interpretation of condition 2(d) adopted above, the answer here would depend on whether the company had authorised Krishnan to drive the company vehicles outside construction sites in the course of his employment. I agreed with the judge that even on the basis of the conceded facts, namely, that Krishnan had been authorised only to ferry himself and work tools between construction sites, this would amount to driving in the course of his employment. It was irrelevant that Krishnan's primary responsibilities had remained that of a building electrician and not a driver: condition 2(d) was aimed at the activity 'driving' and not the occupation 'driver'.

27 Even though this was strictly unnecessary, I would go further and rule that the judge was entitled to believe Krishnan's testimony that he had also been authorised to ferry co-workers although both Syed and the company had denied this. It is trite law that due weight should be given to the judge's assessment of the veracity or credibility of witnesses, given that she has the benefit of observing their demeanour*: PP v Nurashikin Binte Ahmad Borhan* (MA/15/2002) and *Jimina Jacee d/o CD Athananasius v PP* [2000] 1 SLR 205. This ground of appeal was hence dismissed.

**Third ground of appeal : mens rea under s 5(3)**

*(i) Applicable principles in deciding whether an offence is one of strict liability*

28 While the trial below had proceeded on the basis that *mens rea* is required for a s 5(3) offence, the prosecution argued upon appeal that s 5(3) is a strict liability offence, which relieved it from having to prove *mens rea* beyond a reasonable doubt. Instead, it submitted that the onus was on the company to establish on a balance of probabilities that it had taken reasonable care to prevent Krishnan from driving outside construction sites in the course of his employment.

29 Section 5(3) is silent on whether *mens rea* is required for conviction thereunder. In *Forward Food Management Pte Ltd v PP*, I expressed doubts as to whether s 5(3) creates a strict liability offence but emphasised that it was neither necessary nor appropriate to deal with the issue of *mens rea* there since full arguments were not received on that issue. The issue of *mens rea* was hence clearly open for determination in this appeal and it would have to be approached from first principles.

30 The approach to be applied in deciding whether an offence is one of strict liability was established in *Sweet v Parsley* [1970] AC 132 and *Gammon Ltd v AG of Hong Kong* [1985] 1 AC 1. In *Gammon Ltd*, Lord Scarman expressed the following opinion at p 14:

> …(1) there is a presumption of law that *mens rea* is required before a person can be held guilty of a criminal offence; (2) the presumption is particularly strong where the offence is "truly criminal" in character; (3) the presumption applies to statutory offences, and can be displaced

> only if this is clearly or by necessary implication the effect of the statute; (4) the only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern, and public safety is such an issue; (5) even when a statute is concerned with such an issue, the presumption of *mens rea* stands unless it can be shown that the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act.

Lord Scarman further held that while the severity of the maximum penalties may well indicate that Parliament could not have intended to afflict such harsh punishments without *mens rea* being proven beyond a reasonable doubt, it is not a determinative factor as this may be consistent with Parliament's intent to deter the conduct: see p 17F-H. However, if the penalty involved is "slight, involving, for instance, a fine, particularly if adequate enforcement depends upon wholesale prosecution, or if the social danger arising from violation is serious, the doctrine of basing liability upon mere activity rather than fault, is sound": *MV Balakrishnan v PP* [1998] 1 CLAS News 357 at para 12.

31 In *Chng Wei Meng v PP* [2002] 4 SLR 595, I also held that since the rationale behind strict liability offences is to encourage greater vigilance to prevent the commission of the prohibited act, this implies that an accused is entitled to be acquitted if he can prove on a balance of probabilities that he has taken due care and attention to comply with the statutory requirements. This conclusion is not only just and logical, but also mandated by s 79, read with ss 40(2) and 52 of the Penal Code (Cap 224): see *Tan Khee Wan Iris v PP* [1995] 2 SLR 63. See also *M V Balakrishnan v PP* [1998] 1 CLAS News 257 and *Tan Cheng Kwee v PP* [2002] 3 SLR 390. Hence, in the context of this appeal, even if I were to hold that s 5(3) is a strict liability offence, the company was nevertheless entitled to be acquitted if it could prove on a balance of probabilities that it had taken due care and attention to ensure that Krishnan was not employed contrary to condition 2(d) of his work permit.

(ii) Is s 5(3) a strict liability offence?

32 I then applied the principles discussed above and came to the conclusion that s 5(3) is indeed a strict liability offence. First, the offence cannot be described as 'truly criminal' in character and indeed, it carries little social stigma. Secondly, s 5(3) of the Act is concerned with an issue of social concern. It is undoubtedly of social concern that the government's strategy of limiting foreign workers to sectors of the economy where there are needed should succeed. Thirdly, it is also clear that imposing strict liability here will encourage greater vigilance on the part of employers to prevent the breach of work permit conditions. The work responsibilities of foreign workers are ultimately assigned by the employers and given the large numbers of work permit holders in Singapore, it is difficult for the MOM to monitor and ensure compliance with the work permit conditions. Further, the maximum penalty that may be imposed for a s 5(3) offence is only a $5,000 fine which certainly cannot be described as severe or harsh.

*(iii) Has the company proven due care and attention on its part?*

33 Having decided that s 5(3) is a strict liability offence, the next issue was whether the company could avail itself of the defence of due care and attention. This point can be taken shortly. The company was clearly aware of the existence of condition 2(d) given that one of its directors, Mr Lim, had declared in the application form for prior approval that the company would comply with the work permit conditions. Further, it would be quite illogical to argue that the company had taken any due

care and attention to prevent Krishnan from driving in the course of his employment when it had authorised such driving in the first place. It was also irrelevant even if it was true, as the company contended that it had genuinely misinterpreted the terms of condition 2(d). A mistake with respect to the effect or meaning of a work permit condition, like a mistake of law, is not a recognised defence. Otherwise, anyone can escape liability by asserting that it is under the delusion that a particular work permit condition does not mean what it is clearly expressed or intended to mean. This ground of appeal was hence dismissed.

*(iv) What if mens rea is required for a s 5(3) offence*

34 Both parties had proceeded in the court below on the basis that *mens rea* is required for a s 5(3) offence. The prosecution only raised the issue of strict liability in response to the company's submissions upon appeal. As such, I did not have the benefit of the company's arguments on the strict liability point. Nevertheless, even if I were to hold that s 5(3) is not a strict liability offence and that the prosecution must prove *mens rea* beyond a reasonable doubt, I would still be satisfied that the prosecution had satisfied this burden of proof. As discussed in the prior paragraph, the company knew of the existence of condition 2(d) and had authorised Krishnan to drive in the course of his employment and that, in my opinion, was sufficient *mens rea*. Hence this ground of appeal would be dismissed even on the basis that s 5(3) requires *mens rea*.

**Conclusion**

35 For the reasons given above, I dismissed the appeal and upheld the decision of the judge.