Vignes s/o Mourthi v Public Prosecutor (No 2)
[2003] SGHC 212

Case Number : Cr M 16/2003

Decision Date : 18 September 2003

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : M Ravi (M Ravi & Co) for the applicant; Bala Reddy and Francis Ng (Attorney-General's Chambers) for the respondent

Parties : Vignes s/o Mourthi — Public Prosecutor

Criminal Procedure and Sentencing – High court – Trial before High Court – Alleged miscarriage of justice – Application for leave to order re-trial and stay of death sentence pending hearing of application – Whether High Court has jurisdiction to grant leave

1 This was an application by Vignes s/o Mourthi for an order "that leave be granted to the applicant to order that there be a re-trial of the applicant and that the sentence of death passed on him be stayed pending the re-trial".

2 The application was supported by an affidavit by Vignes' Counsel Mr M Ravi and came on for hearing on 12 September 2003 before me.

3 In his affidavit, Mr Ravi said he had been instructed on 10 September 2003 by Vignes' father. The father had been referred to him by Mr J B Jeyaretnam who had prepared an opinion for the father to send with the father's petition for clemency to the President. Mr Jeyaretnam's view was that there was a real possibility of a serious miscarriage of justice in the conviction of Vignes. Mr Ravi said he had studied Mr Jeyaretnam's opinion and discussed it with him and he too was firmly of the view that a miscarriage of justice might in all likelihood have resulted from the conviction of Vignes.

4 According to Mr Ravi's affidavit, this risk of a miscarriage of justice sprung from two courses adopted at the trial of Vignes before the High Court:

> (i) The admission of documentary evidence not produced at the Preliminary Inquiry and produced for the first time at the trial when the maker of the document was called upon to testify.
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> This prevented Counsel for the applicant from taking full instructions from the applicant and to direct questions to the maker of the document touching upon the authencity (*sic*) and reliability of the document. There is a serious question of the admissibility of the document which was not raised by the applicant's counsel. The Trial Judge relied heavily on that document to support his findings of the guilt of the applicant.
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> (ii) The failure of the Trial Judge to accord the applicant an opportunity to engage Counsel of his own choice when he applied to the Trial Judge to discharge Counsel who was acting for him at the trial because of his dissatisfaction with the way his case was presented and to appoint a new Counsel. The Trial Judge refused to grant any adjournment of the trial to enable the applicant to appoint another Counsel of his own choice. The result was that the applicant's case was not fully and exhaustively put before the court.
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> The applicant was denied his constitutional right granted to him by Article 9(3) of the Constitution of Singapore.

5 Mr Ravi's affidavit went on to assert that these two points were not canvassed before the Court of Appeal.

6 It was not disputed that both Mr J B Jeyaretnam and Mr Ravi were not the Counsel who represented Vignes before the High Court or the Court of Appeal. Also, there was no suggestion that either of them had checked with the Counsel who had represented Vignes before the Court of Appeal as to why these two points were not canvassed before the Court of Appeal.

7 In any event, the application had a more serious obstacle. This was the issue whether the High Court had the jurisdiction to grant the prayers sought. Mr Ravi appeared to realise that it did not and that, at the very least, the application should be made to the Court of Appeal. He then started to blame the staff of the Supreme Court Registry. He claimed that when he initially sought to file the papers for the application, their heading referred to the Supreme Court. However, the Registry staff had told him that that was wrong and so he filed them with the heading referring to the High Court. He did not accept that the initial heading he had used was wrong.

8 In *Lim Choon Chye v PP* [1994] 3 SLR 135, the applicant who had been sentenced to death had filed a criminal motion to seek leave to adduce fresh evidence after his appeal against conviction and sentence had been dismissed by the Court of Appeal.

9 Karthigesu JA, delivering the judgment of the Court of Appeal said that as a matter of procedure, once the Court of Appeal has rendered judgment in an appeal heard by it, it is functus officio so far as that appeal is concerned. He considered the application to be an attempt to have a second appeal and said the Court of Appeal had no jurisdiction to allow yet another appeal. However, this did not mean that the applicant had no further recourse or remedy as he could petition for clemency to the President of the Republic of Singapore.

10 In my view, those views should be seen in the context that Karthigesu JA had observed that there was never any suggestion of any defect in the trial below or in the appeal (see p 137 at D).

11 In *Abdullah bin A Rahman v PP* [1994] 3 SLR 129, the applicant was also convicted and sentenced to death and his appeal to the Court of Appeal was dismissed. However, he did petition for clemency to the President but this was unsuccessful. The applicant purported to have learned new information three days before the date of execution and he then applied to adduce fresh evidence. In the circumstances, Chief Justice Yong Pung How, delivering the judgment of the Court of Appeal, said that where the Court of Appeal had heard and disposed of an appeal, it was functus officio. He also added that the Court of Appeal would be acting ultra vires the Supreme Court of Judicature Act if it were to assume jurisdiction on the application.

12 However, Yong CJ also said that even if the Court of Appeal were to assume jurisdiction in which the applicant's Counsel was then urging the Court to recommend to the President clemency for the applicant, the Court was unable to see what sort of recommendation it could possibly make.

13 In *Jabar v PP* [1995] 1 SLR 617, the application was to seek a stay of execution on the death sentence and a declaration that it would be unconstitutional and unlawful to execute the applicant in view of a prolonged delay since the date of conviction.

14 Chief Justice Yong Pung How, delivering the judgment of the Court of Appeal, said at p 631 to 632:

> We are, however, of the view that once sentence is passed and the judicial process is concluded, the jurisdiction of the court ends. Once the Court of Appeal has disposed of the appeal against conviction and has confirmed the sentence of death, it is functus officio as far as the execution of the sentence is concerned. It is not possessed of power to order that the

sentence of death be stayed or commuted to a sentence of life imprisonment, especially when the appellant was convicted of an offence which carried a mandatory sentence of death. The power of commutation or remittance of sentence lies only with the President, under s 8 of the Republic of Singapore Independence Act:

> (1) The President, as occasion shall arise, may, on the advice of the Cabinet -
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> (a) grant a pardon to any accomplice in any offence who gives information which leads to the conviction of the principal offender or any one of the principal offenders, if more than one;
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> (b) grant to the offender convicted of any offence in any court in Singapore, a pardon, free or subject to lawful conditions, or any reprieve or respite, either indefinite or for such period as the President may think fit, of the execution of any sentence pronounced on such offender; or
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> (c) remit the whole or any part of such sentence or of any penalty or forfeiture.

Likewise, the power to order a stay of execution or respite of the sentence lies exclusively with the President. It is solely the prerogative of the President, to decide whether a delay in execution amounts to sufficient ground to justify a commutation of sentence. It is clearly not part of the court's functions. It was on this ground alone that we dismissed the appeal.

15 As can be seen, the Court of Appeal did not say in *Jabar* that only the President had the power to order a stay of execution if an order for a re-trial was made. Furthermore, it would probably be the case that if an order for a re-trial was made, the death sentence would be set aside and hence an order for a stay of execution would be academic. Neither did the Court of Appeal say in *Jabar* that it had no jurisdiction to grant a stay pending the hearing of an application for a re-trial.

16 Accordingly, it was arguable that in the circumstances before me, the Court of Appeal would have jurisdiction to order a re-trial and to order a stay of execution pending the hearing of an application for a re-trial. If it did not have the latter jurisdiction, then the applicant would have to petition to the President for such a stay pending the hearing of the application for a re-trial.

17 I would add that even if the Court of Appeal had the jurisdiction to order a re-trial in the circumstances, this would not be a jurisdiction to allow the applicant to re-litigate his appeal under the disguise of a miscarriage of justice. I hasten to add that I am not saying that the allegations of a miscarriage are a disguise as I have not ruled on the merits of the allegations. Accordingly, the applicant would still have to satisfy the Court of Appeal why there should be a re-trial.

18 In summary, I was of the view that as there had been a full trial before the High Court, it was not for a different High Court judge to order the trial High Court judge to re-try the matter, especially when the applicant's appeal to the Court of Appeal had been dismissed. Neither did the High Court have jurisdiction to grant a stay of execution pending the hearing of an application for a re-trial.

19 Hence, I dismissed the application before me.

Application dismissed.