Lwee Kwi Ling Mary v Public Prosecutor
[2003] SGHC 39

Case Number : CM 4/2003

Decision Date : 27 February 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Edmond Pereira (Edmond Pereira & Partners) for the applicant; Sia Aik Kor (Deputy Public Prosecutor) for the respondent

Parties : Lwee Kwi Ling Mary — Public Prosecutor

Constitutional Law – President – Discretionary powers – Whether President has exclusive power to suspend execution of sentence – Republic of Singapore Independence Act (1985 Rev Ed) s 8(1), Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 237(1)

Criminal Procedure and Sentencing – Sentencing – Execution – Offender serving sentence at time of hearing – Whether court has power to suspend sentence – Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 223

Introduction

This was an application by Mary Lwee Kwi Ling ('Mary'), pursuant to s 223 of the Criminal Procedure Code (Cap 68)('CPC'), for the sentence imposed on her by the High Court in MA 146/2002/01 to be suspended until such time as the President of the Republic of Singapore has determined her petition, pursuant to s 8 of the Republic of Singapore Independence Act ('RSIA'), to have her sentence suspended.

Facts

2 Mary was convicted by the magistrate on a charge of criminal intimidation for uttering a death threat at one Quek Chin Huat ('Quek'), while wielding a chopper at him, an offence punishable under s 506 of the Penal Code (Cap 224). She was sentenced to 10 weeks' imprisonment. Being dissatisfied with her sentence, she appealed. On 28 January 2003, I dismissed her appeal and enhanced her sentence to three months' imprisonment. I also granted an application by her counsel for her sentence to commence only after the Lunar New Year Holidays, ie 4 February 2003. Mary had already commenced serving her sentence by the time this motion was heard.

3 Mary took out the present application for her sentence to be suspended, pursuant to s 223 of the CPC, because she intended to petition to the President. The basis of her petition was her discovery, after her appeal was dismissed, that one of the prosecution's witnesses, one Kulwant Singh, had given false evidence implicating her in the trial before the magistrate. Kulwant Singh had since signed a statutory declaration admitting that he had been bribed by Quek to say, *inter alia*, that he saw chopper marks made by Mary on a dining chair and on the door of her apartment, when in fact there were no such marks. The Corrupt Practices Investigation Bureau was investigating into the matter.

The issue

4 The issues before me were, first, whether the court had the power to suspend Mary's sentence pursuant to s 223 of the CPC, and secondly, if the court had the requisite power, whether the power

should be exercised in her favour.

The law

5 Section 223 of the CPC reads:

> Subject to the provision of this Code and of the Supreme Court of Judicature Act, every sentence of imprisonment to which section 221 or 222 apply shall take effect from the date on which it was passed, unless the court passing the sentence or when there has been an appeal the appellate court otherwise directs.

6 In my view, this section did not support Mary's application for her sentence to be suspended after she has commenced serving it. The section provides that the court may direct that a sentence of imprisonment should *commence* on a date other than the date on which it was passed. In *Lim Teck Leng Roland v Public Prosecutor* [2001] 4 SLR 61, I ruled that a sentencing court could entertain an application under s 223 of the CPC for a deferment of the commencement of a sentence it passed even after a decision had been made previously on the commencement date of the sentence. The court was not *functus officio* in such a case and could alter its decision in respect of the commencement date of the sentence. This was because an order stipulating the commencement date of a sentence did not amount to a "judgment" that was unchangeable. However, once the offender has commenced serving his sentence, it is clear from the words of s 223 of the CPC that the court does not possess the power to re-consider its decision because it can no longer direct that the sentence shall commence on another date. Accordingly, since Mary had already commenced serving her sentence, she could not rely on s 223 of the CPC to defer the commencement of her sentence.

7 The relevant statutory provisions make it clear that the President has the sole prerogative to suspend the execution of a sentence, by virtue of his office. Section 8(1) of the RSIA, which is a constitutional document, reads:

> The President, as occasion shall arise, may, on the advice of the Cabinet –
>
> 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;
>
> b. grant to any 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
>
> c. remit the whole or any part of such sentence or of any penalty or forfeiture imposed by law.

8 In recognition of this, s 237(1) of the CPC also provides the power for the suspension by the President of the execution of any sentence imposed by a court. That sub-section reads:

> When any person has been sentenced to punishment for an offence, the President, acting in accordance with section 8 of the Republic of Singapore Independence Act may at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

9 Parliament, by these two provisions, granted the power to suspend the execution of a sentence only to the President. As a matter of constitutional law, the suspension of sentences are not part of the court's functions and the court cannot usurp the prerogative of the President conferred by statute.

10 The Court of Appeal in *Jabar v Public Prosecutor* [1995] 1 SLR 617 also arrived at the same conclusion that the President, and not the courts, may exercise the powers under s 8(1) of the RSIA, although that decision was with respect to the power to order a stay of execution. The facts of the case were as follows: One Jabar, was convicted on a charge of murder with two others and sentenced to death. On appeal, his conviction was upheld. He petitioned to the President for clemency but the petition was rejected. On the eve of his scheduled execution, Jabar sought a stay of execution from the President when his co-accused claimed that he was solely liable for the murder. The stay was granted and Jabar filed a further petition for clemency. However, this petition was subsequently rejected as well. On the eve of the re-scheduled execution, Jabar filed an application to the High Court seeking a stay of execution of the death sentence on the basis that the execution was unconstitutional due to the prolonged delay in executing the sentence. The High Court dismissed the application. The President ordered a respite pending an appeal to the Court of Appeal which ruled that the courts did not have the power to order a stay of execution. At p 632C of the report, the court held that s 8(1) of the RSIA gave the President the exclusive power to order a stay of execution. Therefore, the court did not possess the power to do so. By this interpretation of s 8(1), the courts similarly do not have the power to order a suspension of the execution of a sentence as that sub-section only gives the President such a power.

Conclusion

11 As the court did not possess the power to suspend the execution of Mary's sentence, it was unnecessary for me to consider whether the circumstances of this case warranted a suspension of the sentence. Accordingly, I dismissed the motion. I noted that Mary was not left without recourse and the proper mechanism for her to seek a suspension of the execution of her sentence was to petition directly to the President pursuant to s 8(1) of the RSIA.