Salwant Singh v Public Prosecutor
[2004] SGCA 46

Case Number : Cr M 18/2004

Decision Date : 05 October 2004

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Kan Ting Chiu J; MPH Rubin J

Counsel Name(s) : Applicant in person; Christopher Ong Siu Jin (Deputy Public Prosecutor) for respondent

Parties : Salwant Singh — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Out of time – Application for extension of time for filing notice of appeal – Reasons for delay and merits of application – Section 50 Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

Criminal Procedure and Sentencing – Appeal – Out of time – Application for extension of time for filing notice of appeal – Whether proper quorum to hear application formed – Rules 13(1), 16 Supreme Court (Criminal Appeals) Rules (Cap 322, R 6, 1997 Rev Ed)

Criminal Procedure and Sentencing – Appeal – Plea of guilty – Whether appeal against conviction possible where accused has pleaded guilty – Whether question of law of public interest arising that merits consideration of Court of Appeal – Section 244 Criminal Procedure Code (Cap 68, 1985 Rev Ed), s 60(1) Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

5 October 2004

Chao Hick Tin JA (delivering the judgment of the court):

1 This was a motion filed by one Salwant Singh, the applicant, asking, pursuant to s 50 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA"), for an extension of time to enable him to file a notice of appeal against the decision of Lai Siu Chiu J made on 28 May 2004 in Criminal Motion No 9 of 2004. The applicant was unrepresented before the judge as well as before us. We heard him on the present motion on 21 September 2004 and refused his application. We now set out our reasons.

The background

2 The applicant was a director and majority shareholder of Infoseek Communications (S) Pte Ltd ("Infoseek"). Infoseek had agreed with United Overseas Bank ("UOB") to offer the latter's customers international "call back" services. One mode of payment for the services was by post-payment credit card billing. This involved Infoseek keying the particulars of each transaction into an electronic draft capture terminal provided by UOB. UOB would then credit the billed amount into Infoseek's bank account.

3 In April 1999, a glitch in Infoseek's computerised billing system caused it to overcharge customers. Although the applicant managed to rectify the bug, he saw in it an opportunity, no doubt wrongfully, to generate excess funds for Infoseek. After correcting the glitch, he began charging UOB customers for call back services they never used.

4 The unusually high volume of business transacted by Infoseek around June 1999 aroused the suspicion of UOB. In the first week of July 1999, UOB froze $116,675.43 from Infoseek's bank account. On 6 July 1999, the applicant left for India. About two years later, he was tracked down, arrested in India and extradited to Singapore. He was then charged for deceiving UOB Card Centre into believing

that the fictitious IDD calls were made by its credit card customers, thereby dishonestly inducing UOB to credit various sums into Infoseek's bank account. Infoseek was subsequently placed under liquidation, with the Official Receiver being appointed the liquidator.

5 Altogether, 765 charges of cheating under s 420 of the Penal Code (Cap 224, 1985 Rev Ed) were preferred against the applicant. He pleaded guilty to five charges and consented to the remaining charges being taken into consideration for the purpose of punishment. The district judge sentenced him to 12 years' preventive detention. Upon appeals by the applicant (against both conviction and sentence) and the Public Prosecutor (only against sentence), the Chief Justice on 14 August 2003 affirmed the conviction and enhanced the applicant's sentence to the maximum of 20 years' preventive detention.

6 About nine months later, on 11 May 2004, the applicant filed Criminal Motion No 9 of 2004 in the High Court seeking the following reliefs:

(a) a review of the question whether the seizure of Infoseek's property by the Commercial Affairs Department and the transfer of the possession of it to the Official Receiver were improper and illegal;

(b) the return of all documents – in printed or electronic form – seized along with Infoseek's property; and

(c) the recovery of the documents suppressed by the Prosecution on the occasion of his trial.

7 At the hearing of the motion on 28 May 2004, the applicant told Lai J that he wanted the return of the documents and Infoseek's property in order to appeal to the Court of Appeal to prove that he was innocent of the charges to which he had pleaded guilty. Lai J, in dismissing the motion, held that the application was misconceived as there was no further recourse available to him.

8 Being dissatisfied with Lai J's ruling, the applicant wanted to appeal to this court. On 31 May 2004, he informed the prison authorities of his intention. On 8 June 2004, the applicant submitted to the prison authorities documents for the filing of another criminal motion. However, the Head of the Prisons Registry did not think that the applicant could appeal against the decision made in Criminal Motion No 9 of 2004. The Head of the Prisons Registry affirmed in her affidavit that she believed that the applicant wished to appeal against his conviction and sentence through the procedure of a criminal motion. However, subsequently, on 22 July 2004, the Prisons Registry filed on behalf of the applicant a notice of appeal with the Registrar of the Supreme Court, together with the set of documents furnished by the applicant on 8 June 2004.

9 According to s 45(1) of the SCJA, a notice of appeal to the Court of Appeal has to be filed with the Registrar of the Supreme Court within 14 days after the date on which the decision appealed against was given. Therefore, a valid notice of appeal against the decision of 28 May 2004 had to be filed latest by 11 June 2004.

10 On 30 July 2004, a senior assistant registrar of the Supreme Court informed the applicant that the notice of appeal was filed out of time, and that he would have to file a criminal motion to seek the leave of court to file the notice of appeal out of time. Pursuant to this intimation, the applicant filed the present criminal motion on 24 August 2004 asking for an extension of time of ten days, from the date of grant of the motion, to file a notice of appeal against Lai J's decision of 28 May 2004.

Extension of time

11 We will first address what on the face of it was a motion, pursuant to s 50 of the SCJA, to seek an extension of time to file a notice of appeal. Section 50 appears under Part V of the SCJA with the heading "Criminal Jurisdiction of Court of Appeal". There is a dearth of authorities on the interpretation and application of s 50. This section provides that:

> The Court of Appeal may, in its discretion, on the application of any person desirous of appealing who may be debarred from so doing by reason of his not having observed some formality or some requirement of this Act, permit an appeal upon such terms and with such directions as it may consider desirable in order that substantial justice may be done in the matter, and may, for that purpose, extend any period of time prescribed by section 45 [which deals with notices of appeal] or 47 [which deals with petitions of appeal].

12 However, it is clear that s 50 is strikingly similar to s 250 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") which provides that:

> The High Court may, on the application of any person desirous of appealing who is debarred from so doing upon the ground of his not having observed some formality or some requirement of this Code, permit an appeal upon such terms and with such directions to the District Judge or to the Magistrate and to the parties as the Court considers desirable in order that substantial justice may be done in the matter.

13 In *Zulkifli bin Puasa v PP* [1985] 1 MLJ 461 ("*Zulkifli*"), the Brunei Court of Appeal had the occasion to consider a provision that is *in pari materia* with our s 250 of the CPC. There, the court held at 462 that:

> There are two factors to be considered upon an application for an extension of time, (1) the length of the delay and whether it can be satisfactorily explained, and (2) whether the out of time application is likely to succeed.
>
> Where … the delay is of short duration the court may, if it thinks fit, disregard the delay, even in the absence of satisfactory reasons, but, where a substantial interval of time (a month or more) has elapsed, an extension of time will not be granted, as a matter of course, without a satisfactory explanation: see *Rhodes* [(1910) 5 Cr App R 35]. Where the delay is minimal the court will still not grant an extension of time if the application for which the extension is sought is bound to fail: there must be an arguable case. Moreover, even though the subsequent application may be likely to succeed – as where a fellow-prisoner's conviction has been quashed – the court will not grant an extension of time as a matter of course: see *Rigby* [(1923) 17 Cr App R 111]. The entire circumstances will be considered.

14 This approach of the Brunei Court of Appeal was adopted by the Singapore High Court in *Seah Hee Tect v PP* [1992] 2 SLR 210 when considering our s 250 of the CPC. We would also respectfully endorse that approach. Turning to s 50 of the SCJA, we were unable to see why the same considerations should not also be applicable when applying this provision.

15 Interestingly, we observe that the considerations enunciated in *Zulkifli* are also very much the same considerations which apply where an extension of time is sought to file a notice of appeal out of time in a civil matter. They have been enumerated under four heads: (a) the length of the delay; (b) the reasons for the delay; (c) the chances of the appeal succeeding if an extension to file a notice of appeal is granted; and (d) the degree of prejudice which would be suffered by the

respondent if the application is granted: see *Pearson v Chen Chien Wen Edwin* [1991] SLR 212 and *Aberdeen Asset Management Asia Ltd v Fraser & Neave Ltd* [2001] 4 SLR 441.

16 Reverting to the present case, as far as the period of the delay in filing the notice of appeal and the reason for the delay were concerned, it was clear to us that within three days of the decision given in Criminal Motion No 9 of 2004, the applicant had indicated his intention to appeal. It was well within the period prescribed by law. It was because the Prisons Registry thought that no further appeal was available to the applicant that timely action was not taken on his behalf. The delay was not brought about by the applicant. Therefore, if the only reason standing in the way of the applicant filing an appeal against the decision of Lai J was because of the delay, an extension of time should have been granted to the applicant to take the matter to this court.

The merits

17 However, the applicant's real problem was in satisfying the second limb of the test pronounced in *Zulkifli.* It seemed clear to us that the applicant's object in seeking the return of the documents was to show that he could not be guilty of the charges and to have his convictions, and consequently, the sentence, set aside. However, the obstacle in his way was the fact that his convictions did not arise from findings made by the court after a trial but from his own plea of guilt to the charges. Under s 244 of the CPC, there can be no appeal against a conviction to which an accused has pleaded guilty. Such an accused can only appeal against sentence.

18 In any case, under our system of criminal justice as provided in the CPC, an accused convicted before a subordinate court has only the right to appeal to the High Court whose decision thereon would, as a rule, be final: see *PP v Bridges Christopher* [1997] 2 SLR 217 at [4]. The exception to this rule is to be found in s 60(1) of the SCJA which provides:

> When a criminal matter has been determined by the High Court in the exercise of its appellate or revisionary jurisdiction, the Judge may on the application of any party, and shall on the application of the Public Prosecutor, reserve for the decision of the Court of Appeal any question of law of public interest which has arisen in the matter and the determination of which by the Judge has affected the case.

19 The applicant had not asked the High Court at the conclusion of the hearing of his appeal, and the cross-appeal of the Public Prosecutor, to state a point of law of public interest for the consideration of the Court of Appeal. Neither did the Public Prosecutor think that there was any point of law of public interest in the case which required the consideration of the Court of Appeal. That being the position, there was no further avenue of appeal open to the applicant.

20 Having regard to his antecedents, the district court was clearly entitled to invoke s 12(2) of the CPC to impose a sentence of preventive detention. The High Court, in exercise of its appellate jurisdiction, was also acting within its powers when it enhanced the duration of the preventive detention to a term of 20 years, upon allowing the cross-appeal of the Public Prosecutor. We were unable to see any points of law of public interest arising which required the determination of the Court of Appeal.

21 We should add that as far as the documents which the applicant had asked for were concerned, the Police had already handed them over to the Official Receiver, who is the liquidator of Infoseek. As the documents were seized from Infoseek, they ought to be returned to Infoseek and as the latter was under liquidation, the handing over of the documents to the liquidator was entirely in order. The documents had been returned to the proper party. We were given to understand at the

time of the hearing before us that the Official Receiver was willing to let the applicant have the documents. That was a matter entirely within the discretion of the Official Receiver. It had nothing to do with the applicant's convictions before the district court nor his unsuccessful appeal to the High Court. Neither had it anything to do with the successful cross-appeal of the Public Prosecutor against sentence.

22 As there was no further avenue of appeal available to the applicant in relation to his convictions and sentence, there was really no point in granting any extension of time to enable the applicant to file his notice of appeal against Lai J's decision of 28 May 2004. His convictions and sentence had become final. Any lodgment of a notice of appeal would be a waste of his time and that of the court.

Question of quorum

23 At the hearing of the motion before us, the applicant raised the point that this court, consisting of three judges, was not the appropriate quorum to hear the motion. He relied upon rr 13(1) and 16 of the Supreme Court (Criminal Appeals) Rules (Cap 322, R 6, 1997 Rev Ed) ("the Criminal Appeals Rules"), which read:

> 13(1) All applications to the Court shall, unless otherwise provided, be made by motion and shall be heard in open Court.
>
> 16. Every application, other than an application under rule 17, shall be heard by a single Judge of the Court.

The applicant submitted that his application for an extension of time should have been heard by a single Judge.

24 The Criminal Appeals Rules set out the procedures on how an appellant, who "has been convicted of a criminal offence in any court and who by any written law is entitled to appeal to the Court of Criminal Appeal" should file his appeal and on how an interlocutory application may be made to the appeal court. The Rules also deal with the disposal of such interlocutory applications as well as the appeal itself.

25 Rule 16 of the Criminal Appeals Rules relates to the hearing of an interlocutory application in an appeal. The present motion before us was not such an application. There was no appeal as yet. The applicant was asking for an extension of time to file an appeal against Lai J's dismissal of his Criminal Motion No 9 of 2004. Thus, the present motion clearly fell outside the ambit of the Criminal Appeals Rules. The proper quorum for hearing such an application should consist of three judges and this is provided for in s 30(1) of the SCJA which reads:

> The civil and criminal jurisdiction of the Court of Appeal shall be exercised by 3 or any greater uneven number of Judges of Appeal.

26 It may be of interest to note that there is a similar provision in the SCJA relating to the hearing of interlocutory applications in a pending civil appeal by a single judge. This is s 36(1) which reads:

> In any proceeding pending before the Court of Appeal, any direction incidental thereto not involving the decision of the appeal, any interim order to prevent prejudice to the claims of parties pending the appeal, and any order for security for costs and for the dismissal of an appeal

for default in furnishing security so ordered, may at any time be made by a Judge.

27 Accordingly, this was the proper quorum to hear the present criminal motion.

28 For the reasons set out above, we dismissed the application herein.