Hong Leong Finance Ltd v Public Prosecutor
[2004] SGHC 199

Case Number : Cr Rev 16/2004

Decision Date : 07 September 2004

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Phua Siow Choon (Michael BB Ong and Co) for petitioner; Kan Shuk Weng (Deputy Public Prosecutor) for respondent

Parties : Hong Leong Finance Ltd — Public Prosecutor

Criminal Procedure and Sentencing – Confiscation and forfeiture – Effect of delay in bringing petition for criminal revision

Criminal Procedure and Sentencing – Confiscation and forfeiture – Whether court could order forfeiture due to seriousness of offence – Sections 12, 23, 32(1) Wholesome Meat and Fish Act (Cap 349A, 2000 Rev Ed)

Criminal Procedure and Sentencing – Confiscation and forfeiture – Whether owner ought to be informed before forfeiture order made – Whether failure to inform owner sufficient to attract criminal revision

7 September 2004

Yong Pung How CJ:

1 This was a petition by Hong Leong Finance Limited ("HLF") seeking criminal revision of the order for forfeiture of a vehicle made on 23 June 2003 under s 32(1) of the Wholesome Meat and Fish Act (Cap 349A, 2000 Rev Ed) ("WMFA"). I dismissed the petition and now give my reasons.

The facts

2 The petitioner, HLF, was the owner of a reefer truck bearing registration number YJ955K ("the vehicle") by virtue of a hire purchase agreement entered into on 2 April 2002 with one Tan Kian Chye ("Tan").

3 On 1 April 2003 at about 9.30am, officers from the Agri-food and Veterinary Authority ("the AVA") attended to a complaint regarding the importation of meat products from Malaysia. The meat products were purportedly being stored at No 34 Jalan Siglap Singapore 678563 ("the premises").

4 Upon arrival at the premises, the AVA officers spotted Tan, who was about to drive off in the vehicle. The AVA officers immediately stopped Tan from leaving the premises and proceeded to check the vehicle. They found 2,340kg of pig intestines in the vehicle and another 1,960kg of pig intestines in the freezers at the premises.

5 Tan admitted to having imported the pig intestines from Malaysia. He also informed the AVA officers that the premises were used for the storage and processing of the pig intestines. Tan was subsequently charged with having in his possession meat products, which were imported from Malaysia without a permit, for the purpose of selling, an offence under s 23(1)(a) of the WMFA ("the first charge"). In addition, he was also charged with operating a processing establishment without a licence from the Director-General of the AVA, an offence under s 12(1) of the WMFA ("the second charge").

6 On 17 June 2003, Tan pleaded guilty to both charges and was sentenced on 23 June 2003 to a total of 14 months' imprisonment and ordered to pay a fine of $30,000.

7 Consequent to Tan's conviction, the court ordered that the vehicle be forfeited under s 32 of the WMFA by the AVA ("the forfeiture order"). HLF was only informed of the vehicle's forfeiture on 23 June 2003, after the order was made. Tan did not appeal against conviction, and no grounds were given for the judge's decision.

8 On 1 July 2003, counsel for HLF wrote to inform the AVA that HLF would be applying to the High Court for a criminal revision to set aside the forfeiture order. On 16 July 2003, counsel also wrote to the Attorney-General's Chambers ("the AGC") requesting them to take up an application for criminal revision of the forfeiture order.

9 By their reply dated 4 August 2003, the AGC declined to take up the application. However, HLF took no further action for a year. On 12 June 2004, the Deputy Public Prosecutor ("DPP") wrote to counsel to ask if HLF still intended to file a petition for criminal revision, without confirmation of which the AVA would dispose of the vehicle.

10 On 21 June 2004, a year after the forfeiture order was made, counsel for HLF filed the present petition for criminal revision.

The petition

11 HLF submitted that it suffered hardship and serious injustice and that the trial court was wrong in ordering forfeiture of the vehicle as HLF was deprived of the opportunity to be heard before the order was made. The court therefore did not have regard to all the circumstances of the case in ordering the forfeiture. HLF also relied on the fact that it was an innocent party and had acted in a reasonably prudent manner in granting the hire purchase facilities to Tan.

1 2 HLF therefore sought to have the forfeiture order set aside and the matter remitted to the subordinate court for the holding of a disposal inquiry with regard to the vehicle, where HLF would be given an opportunity to make representations to the court as to why the vehicle should not be forfeited.

The respondent's case

13 The DPP submitted that the forfeiture order should not be set aside as the order of forfeiture was justified due to the gravity of the offence. Morever, even if HLF had suffered injustice, which was not conceded, the force of such injustice was greatly diminished by the delay of one year before HLF filed the present petition.

Principles of revision

14 The High Court's revisionary powers are conferred by s 23 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA") and s 268 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC"). It is established law that such powers of revision are discretionary and must be exercised sparingly. The test laid down by the courts is whether the failure to exercise revisionary powers will result in serious injustice being done. No precise definition of what constitutes serious injustice is possible. However, it must generally be shown that there was something palpably wrong in the decision by the court below, which strikes at its basis as an exercise of judicial power: see *Ang Poh Chuan v PP* [1996] 1 SLR 326, followed in *Magnum Finance Bhd v PP* [1996] 2 SLR 523 and *Credit*

Corporation (M) Bhd v PP [2000] 3 SLR 762.

Whether the trial court should have exercised its discretion to forfeit

15 The vehicle was forfeited under s 32 of the WMFA, which provides that:

> (1) The court … may make an order for the forfeiture of any item which has been seized under the provisions of this Act if —
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> (a) the court is satisfied that —
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> an offence under this Act or the rules has been committed; and
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> the item seized was the subject-matter, or was used in the commission, of the offence; and
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> (b) having regard to the circumstances of the case, the court thinks it fit to order the forfeiture of the item.

16 There is no doubt that the elements of s 32(1)(a)(i) and (ii) were satisfied and that the vehicle was used in the commission of an offence under the Act.

17 The issue before me, therefore, was whether, in the circumstances before the court, the forfeiture order was justified.

18 I have stated that owners of vehicles ought to be charged to enable them to defend themselves: *Chandra Kumar v PP* [1995] 3 SLR 123 and *Ang Poh Chuan* (at [14] *supra*). On the other hand, the courts have no duty to conduct an investigation into the ownership of the vehicle before ordering its forfeiture. Furthermore, HLF itself admitted that the Prosecution had no positive statutory duty to inform it of the intended forfeiture.

1 9 In a case such as this where the offence is serious, the courts' concern is to prevent the vehicle from being used in the commission of further offences. Moreover, the lack of opportunity to be heard only amounts to hardship on the part of finance companies: *Ang Poh Chuan* (at [14] *supra*). Such hardship does not by itself lead to a finding of injustice upon which a criminal revision must be premised. To show injustice, it would have to be further shown that the trial court had erred in ordering forfeiture. It is to this issue that I now turn.

20 HLF relied on the case of *Chandra Kumar v PP*, where I had accepted that the degree of complicity of the petitioner in the offence and the fact that the petitioner could not reasonably have taken any preventive measures regarding the use of the vehicle in the commission of the offence were relevant considerations for the court in exercising its discretion to forfeit. I also accepted that the value of the vehicle was relevant in so far as it should be considered whether forfeiture was proportionate to the gravity of the offence and the maximum punishment that could be imposed.

21 HLF also relied on the case of *Tanglin Cars Pte Ltd v PP* [1997] 1 SLR 428, where I had stated that it would also have to be shown that the petitioners were so grossly negligent in the manner they conducted their business that it could be said that they were "tainted with complicity" in having shown reckless disregard for the consequences of the use of their vehicle.

22 HLF submitted that it was an innocent party which did not connive or participate in or benefit

from the offence Tan committed. HLF further submitted that it was reasonably prudent in granting the hire purchase facilities to Tan. HLF argued that it had verified the income of Tan and was satisfied that Tan's debt serving ratio was sufficient for him to service the instalments. The vehicle was a refrigerated motor lorry which HLF believed was to be used for Tan's legitimate business of supplying frozen food. The hire purchase agreement further provided that the vehicle should not be used contrary to law, and that in the event of such a breach of the agreement, HLF would be entitled to resume possession of the vehicle.

23 However, this was not the first time that a finance company had argued its innocence before the court. In *PP v Mayban Finance (Singapore) Ltd*[1998] 1 SLR 462, an order was made to forfeit a lorry under hire purchase which had been used to transport illegal workers. In that case, I stated at [33] and [34] that:

> I was aware that this case could have tremendous repercussions on the finance or car rental companies. It is unfortunate that they should be the unwitting victims. In most cases, the finance companies would have no knowledge of the background of the applicant under the hire-purchase agreement. However, the finance and car rental companies could take certain precautions, *eg* requiring a guarantee from the purchasers of vehicles under hire-purchase agreements. This would increase the cost of persons using such vehicles for their business. However, I am confident that the slight increase in cost should not deter them from doing business. …
>
> [T]he courts have to warn finance and car rental companies to take more precautions when entering into hire-purchase or rental agreements for their vehicles.

24 I reiterated (at [38]) in *Credit Corporation (M) Bhd v PP*(at [14] *supra*) that:

> Car rental and finance companies should modify their trade practices to cover themselves. The cost will be passed down to car hirers or borrowers. With the deterrent effect of pecuniary loss, all parties will be made to be more careful in handling their vehicles

25 Finance companies are responsible for the use of their vehicles and for protecting themselves against loss of their vehicles. Finance companies are well aware of the commercial risk associated with lending out vehicles on hire purchase. Therefore, they should inquire more carefully about the customer's occupation and place of work. If finance companies find difficulty in keeping watch on the use of their vehicles, they should insure themselves against the loss of their vehicles and, if they so desire, have the customer pay the cost of the insurance premiums.

26 It was undisputed that HLF was an innocent party and that HLF had been reasonably prudent in granting the hire purchase facilities to Tan. Nevertheless, I agreed with the DPP's contention that the trial court was justified in ordering the forfeiture of the vehicle due to the seriousness of the offence. In the present case, the amount of illegally imported meat products was immense, involving almost five tonnes of pig intestines. The meat, had it been diseased or contaminated, could potentially have had an adverse impact on the health of Singapore's population if Tan had not been arrested in time.

27 I was thus of the view that forfeiture was appropriate due to the grave nature of the offence. The maximum punishment under s 23(2) WMFA is a fine not exceeding $50,000 or imprisonment for a term not exceeding two years or both. In this case, the offence was serious, and Tan was sentenced to 14 months' imprisonment and a fine of $30,000. The value of the vehicle under the hire purchase agreement was $83,576. In the light of the gravity of the offence and the maximum

punishment prescribed by the statute, it was evident to me that forfeiture of the vehicle was not a disproportionate order. I therefore found that the court below had correctly exercised its discretion to forfeit the vehicle.

28 I recognised that it would have been desirable for HLF to have been given the opportunity to make submissions to the court below as to why the vehicle should not be forfeited. However, having regard to the circumstances of the case, I had no doubt that the lower court would nevertheless have come to the same conclusion and forfeited the vehicle. Therefore, as no injustice had been caused by the forfeiture order, I saw no reason to remit the case back to the subordinate court for a disposal inquiry and dismissed the petition for criminal revision. Nevertheless, I made the following observations on HLF's delay in bringing the application for revision.

Delay

29 A party seeking revision must bring its application promptly. The effect of delay was clearly laid down in *Ang Poh Chuan* (at [14] *supra*). In that case, I stated that while, in a case of injustice generally, delay would not be material, delay might indicate that there was in fact no injustice caused or that the force of any injustice was seriously attenuated by the delay, such that no exercise of the discretion ought to be made in favour of the petitioner.

30 Although HLF promptly wrote to the AGC asking them to take up a criminal revision after learning of the forfeiture order, it did not take further action for a year after receiving the AGC's refusal to take up the application. The reasons given were, firstly, that delay was caused by counsel regarding the appropriate procedure, parties and correct forms to use in these proceedings. The delay was also caused by the HLF's various overtures for cooperation from its agents who processed the application forms for hire purchase financing and the verification of income documents to ensure that Tan was in the financial position to pay the instalments due under the hire purchase agreement.

3 1 In my view, HLF had not offered any credible explanation for the delay of almost a year. Counsel's failure to ascertain the appropriate proceedings certainly did not justify such a delay. Furthermore, I found it difficult to see how the verification of Tan's financial position, post-forfeiture, was relevant. In fact, such an argument was inconsistent with and would seem to undermine HLF's earlier position that it acted reasonably prudently in the first place, in granting Tan the hire purchase facility, having previously assessed his debt serving ratio to be sufficient to service the instalments.

3 2 In fact, as the DPP also pointed out, it was reasonable to infer from the circumstances that the petition for criminal revision was filed only in response to the letter from the Prosecution to counsel asking them to confirm HLF's position, and the delay would have been longer if the Prosecution had not so written. The fact that HLF petitioned for criminal revision only one year after the forfeiture order was made further indicated that the forfeiture of the vehicle has had little, if any, adverse impact on it. The delay by HLF was inconsistent with its argument of having suffered gross injustice.

33 Therefore, even if HLF had been a victim of injustice by virtue of the forfeiture order, which it was not, any injustice it suffered would have been attenuated by the considerable delay in bringing the petition and the failure to adequately explain the delay.

Conclusion

34 The lower court had rightly exercised its discretion to forfeit the vehicle. HLF's delay in bringing the petition was also without excuse. The petition for criminal revision was accordingly

dismissed.

Application for criminal revision dismissed.