Law Society of Singapore v Chen Kok Siang Joseph
[2005] SGHC 179

Case Number : OS 422/2005, NM 32/2005

Decision Date : 26 September 2005

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; Tay Yong Kwang J; Yong Pung How CJ

Counsel Name(s) : Ramesh Tiwary (Edmond Pereira and Partners) for the applicant; Respondent absent and unrepresented

Parties : Law Society of Singapore — Chen Kok Siang Joseph

Legal Profession – Show cause action – Advocate and solicitor misrepresenting to prison authorities his relationship with prisoner-client by posing as prisoner's friend in order to interview prisoner in prison – Whether advocate and solicitor's conduct amounting to misconduct unbefitting an advocate and solicitor – Whether appropriate for court to grant application – Appropriate penalty – Sections 83(1), 83(2)(h) Legal Profession Act (Cap 161, 2001 Rev Ed)

26 September 2005

Tay Yong Kwang J (delivering the judgment of the court):

1 This is a motion to a court of three Judges under s 98 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act") for the respondent to show cause why he should not be dealt with under s 83 of the Act.

The findings of the Disciplinary Committee

2 The respondent was admitted as an advocate and solicitor on 25 July 1998. The Disciplinary Committee of the Law Society of Singapore ("the Law Society") heard the following charge against him and found that cause of sufficient gravity existed for disciplinary action under s 83 of the Act:

> That Joseph Chen Kok Siang is guilty of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act (Chapter 161) in that he on 6 September 2001 at the Admiralty West Prison misrepresented himself as a friend of the prisoner Gabriel Baldwin who was then serving sentence in that institution and failed to disclose that he was in fact there in his official capacity as an advocate and solicitor who had been briefed to act for the said Gabriel Baldwin and thus induced the prison officer to allow him to interview the said Gabriel Baldwin.

3 The respondent was not represented and was absent from the hearing before the Disciplinary Committee. Having satisfied itself that the rules pertaining to service of documents had been complied with, the Disciplinary Committee proceeded to hear and determine the charge in the respondent's absence.

4 Gabriel Baldwin ("Baldwin"), while serving sentence in the prison mentioned in the charge, committed an aggravated offence and was sentenced by the Superintendent of Prisons to seven days' confinement in a punishment cell, forfeiture of 40 days' remission of sentence and twelve strokes of the cane. The prisoner's family then engaged the respondent to appeal against the said punishment.

5 The respondent wrote to the prison authorities on 24, 25 and 27 August 2001 seeking

permission to interview Baldwin for the purpose of taking a statement of facts from him. The respondent also requested that disciplinary action be held in abeyance in the meantime and that the circumstances of Baldwin be reconsidered. On 31 August 2001, the prison authorities wrote to inform the respondent that his requests were not acceded to as "the offence committed by the prisoner is an institutional disciplinary matter". It was the policy of the prison authorities not to allow lawyers to interview prisoners concerning institutional offences for which the prisoner concerned was not charged in a court of law. The Attorney-General's Chambers advised subsequently "that prisoners do not have a legal right to be represented by counsel for disclosed offences committed in an institution under the jurisdiction of Director of Prisons".

6 On 6 September 2001, Baldwin's grandmother went to the said prison to visit him and was given a queue number. The visit was restricted to the prisoner's family, relatives and reputable friends. When her turn came, she informed the sergeant on duty that someone else would also be there to visit Baldwin.

7 Subsequently, Baldwin's grandmother and the respondent approached the sergeant. When asked by the sergeant how he was related to the prisoner, the respondent replied that he was "just a friend". The respondent's identity card was handed over and after the prison's records showed that there was no adverse record regarding him, he was allowed to see Baldwin together with the grandmother.

8 The sergeant allowed the respondent to visit Baldwin because he had said he was a friend of the prisoner. Had the sergeant known that the respondent was a lawyer visiting the prisoner in that capacity, he would not have allowed the visitation and would have referred the matter to the duty officer for advice. Approval for visits by lawyers had to be given by the superintendent of that prison.

9 Later that day, the duty officer was informed by a member of his staff that a visitor wished to speak to him. When the duty officer went to meet the prisoner's grandmother and the respondent, the latter started questioning him about Baldwin. The duty officer then asked the respondent if he was a lawyer. The respondent replied that he was and that he was representing Baldwin. The duty officer recalled that a lawyer had requested to interview Baldwin but his request was turned down. He wondered why the respondent was allowed to visit with the prisoner's family as a lawyer.

10 The duty officer went over to the records office to check. He then went back to the respondent and told him that the prison had already informed him that his request to visit Baldwin was not acceded to and he therefore ought not to have visited him. The respondent then apologised to the duty officer who informed him that he would have to seize the piece of paper on which the respondent had been taking notes. The respondent handed it over to the duty officer. The respondent and the grandmother were then escorted out of the prison.

11 A letter of complaint was later sent by the Prisons Department to the Law Society. It appeared from that letter that the respondent subsequently used the instructions he had taken during the visit to write a letter dated 18 September 2001 to the Director of Prisons.

12 As mentioned earlier, the respondent chose not to defend himself before the Disciplinary Committee and did not send any letter of explanation or of mitigation. On the above facts, the Disciplinary Committee noted that the proper course of action for the respondent would have been to apply to court to test the legality of the position taken by the prison authorities and the validity of the opinion given by the Attorney-General's Chambers to the said authorities. Instead of taking that course, the respondent resorted to subterfuge and chose to gain access to Baldwin by misrepresenting himself to be a friend of the prisoner, knowing that his request to interview Baldwin as

a lawyer had been refused.

13 The Disciplinary Committee accepted that it was the duty of an advocate and solicitor to represent the interests of his client without fear or favour and by all means legal but not by misrepresentation. In its opinion, what the respondent had done was clearly wrong as integrity was the *sine qua non* of the legal profession. It found that the respondent had not only disgraced himself but had also brought the legal profession into disrepute.

The decision of the court

14 The respondent was given notice of the present proceedings by way of substituted service which was effected through an advertisement in the Straits Times on 11 August 2005. He did not attend the hearing in court and did not instruct any counsel to present any mitigation plea.

15 Before us, counsel for the Law Society, when asked whether such conduct as proved amounted to dishonesty, opined rather magnanimously that it was more a case of misrepresentation rather than dishonesty. We need only point out that misrepresentation, whether by stating an outright falsehood or by deliberately concealing a truth, could be fraudulent or dishonest in nature. Fraud is essentially the gaining of some benefit, financial or otherwise, by deceit or trickery. Misrepresentation can therefore involve dishonesty.

16 In the present case, did the conduct of the respondent fall within the ambit of s 83(2)(*h*) of the Act ("guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession")? Before we determine this question, we should discuss the decision in *Law Society of Singapore v Ong Ying Ping* [2005] 3 SLR 583 ("*Ong Ying Ping*") at some length as the facts there are almost a mirror image of those here. The present case was originally scheduled to be heard on 26 May 2005, one day before the hearing of *Ong Ying Ping*. However, as substituted service of notice of these proceedings had not been effected yet on the first hearing date, this case was adjourned to be heard in August 2005. In the meantime, *Ong Ying Ping* was heard on 27 May 2005 and the written grounds of decision delivered on 15 July 2005.

17 In *Ong Ying Ping*, an advocate and solicitor of some 12 years' standing ("Ong"), was instructed to act for a man who was remanded in Queenstown Remand Prison. He wrote to the prison for permission to interview his client. Permission was not sought for any other person to be present during the interview. The prison's letter, granting the permission sought, permitted only Ong to be present at the interview. Ong then informed his client's wife about the forthcoming interview session.

18 On 10 October 2001, the day of the interview, the client's wife arrived at the prison before Ong. She approached the Chief Wardress to ask if she could accompany her husband's lawyer for the interview. Her request was not acceded to. Ong arrived at the prison subsequently. It was accepted that he knew that the client's wife would not be permitted to be present at the interview.

19 They approached the wicket gate together. Ong was asked about the identity of the client's wife and he claimed that she was his assistant. At the gate office, Ong was asked the same question and he replied to the same effect. He also indicated his office address for himself and the client's wife. At the interview room, Ong was asked to write down the purpose of the client's wife's visit and to state that she was not related to the prisoner-client on the letter of request that he had sent to the prison. He wrote "and [Ms Tan] to assist in obtaining information from the prisoner". There was some dispute as to how the words came to be written on the letter of request but Ong did not declare that the client's wife was not related to the client.

20 Subsequently, the prison authorities wrote to Ong twice to clarify the said Ms Tan's status but received no response. It was only after a partner of Ong's law firm had confirmed in a telephone call from the prison that Ms Tan was a client and not an employee of the law firm that Ong replied to the prison. He confirmed in his letter to the prison that Ms Tan was indeed the prisoner's wife and was not employed by his firm. However, he claimed that her presence greatly assisted in reducing the time required to complete the interview and proceed with the prisoner's case. He ended the letter by apologising unreservedly if any inconvenience had been caused by him.

21 Some weeks later, Ong was informed by the Law Society that a complaint had been lodged against him by the prison authorities. Ong then wrote to the prison authorities stating his side of the story and that "you should note that it is the easiest of procedures to create documentation for a lawyer's firm to employ a prisoner's family member around the time of a scheduled visit" and that "after the visit, the 'employment' would be terminated 'for personal reasons' ". He then demanded a written apology from the Prisons Department for making allegations about his integrity or competency to third parties without clarifying the matter with him.

22 The court there found that Ong, instead of attempting to comply with the rule prohibiting relatives of prisoners from accompanying the respective prisoner's lawyer to interviews with the prisoner, not only did not bother to do so but deliberately misled the prison officers concerned in order to assist Ms Tan in gaining entry into the prison. This, the court held, was improper conduct that fell within the ambit of s 83(2)(h) of the Act. Andrew Phang Boon Leong JC, who delivered the judgment of the court, went on to consider the factors relevant to the sanction to be imposed on Ong at [64] to [69]:

> 64 … It ought not – indeed, *cannot* – be the case that a lack of probity and respect be allowed to be demonstrated towards the prison authorities. Indeed, the very *raison d'etre* of the entire prison system depends on the maintenance of integrity that will, in turn, ensure that the security and procedures of the prison concerned are not breached in even the slightest degree. Looked at in this light, an unjustifiably lenient attitude towards the respondent in the present case would not only blatantly militate against the ideals and practices in the prison system that have hitherto been unblemished but would also signal that such ideals and practices are not to be taken seriously. This would clearly also be the thin end of the wedge which, if unchecked, will completely crack open and undermine a most important and integral part of the administration of justice in Singapore.
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> 65 The fact that this is apparently the first case of its kind to come before the court is also significant. Such conduct must be nipped in the bud.
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> 66 We note, further, that the respondent is an officer of the court. His task is to aid in the administration of justice, not to undermine it. Integrity and honesty are not simply necessary; they are the qualities that every legal practitioner *must* possess, for without them, the entire reputation of the law will be forfeit. The legal profession aids, immeasurably, in the administration of justice. Its reputation in the eyes of the public must be maintained and even enhanced wherever possible. The signal importance of this last-mentioned point centring on public confidence is vital and cannot be overemphasised.
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> 67 Unfortunately, by his actions, the respondent has not only undermined one important institution in our system of justice (*viz*, the prison system) but has simultaneously also undermined the status and tarnished the image of another important institution to which he belongs (*viz*, the legal profession).

> 68 Perhaps the respondent did not realise the far-reaching and adverse as well as detrimental consequences his ill-advised actions would have. But that is no excuse. As we have pointed out, his refusal to abide by the rules and his positive actions in misleading the prison authorities are not only objectively wrong in fact but will also objectively have an adverse and detrimental effect on both the prison system as well as the legal profession. We have in mind, in particular, the lack of respect that will be generated for these two vital institutions – both from the public's perspective and even from within, from the perspective of those personnel who are part of those institutions. When the message to both the public from without and to the personnel manning the institutions from within, is that the ideals and procedures of those institutions do not really matter and can be trifled with, this will (as we have already noted) be the beginning of a bitter and calamitous end. We cannot overemphasise the importance of preventing such consequences unequivocally and unhesitatingly.
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> 69 All these considerations weighed heavily on our minds and, in turn, necessarily weighed heavily against the respondent. …

23 The court in *Ong Ying Ping* then considered that while the absence of material gain was a mitigating factor in Ong's favour, that could not exonerate him from the fact that he had clearly contravened the prison's rule and, more significantly, had misled the prison authorities: at [76]. It also noted that it had not been clearly established that Ong was dishonest, although he was at least guilty of conduct that fell below that which was expected from a member of an honourable profession. In the circumstances, therefore, it did not think that striking him off the roll of advocates and solicitors was appropriate: at [77]. The court also considered that, notwithstanding Ong's lack of wisdom and probable recklessness, his otherwise unblemished record suggested that he could still contribute as a legal practitioner and that his conduct, "lamentable though it may be, was not clearly dishonest and, hence, did not go beyond the pale": at [82]. Bearing in mind that Ong was also held in high regard by his peers in the legal profession, that he had a record of public service (including a stint serving on the Council of the Law Society) and that he was primarily in civil and not criminal practice, the court suspended Ong from practice for two years.

24 As stated earlier, the material facts of *Ong Ying Ping* are in essence a mirror image of those in the present case. Ong misled the prison authorities into allowing the relative of a prisoner to be present at the interview with his lawyer by misrepresenting that she was his assistant while the respondent here misled the prison authorities into allowing a lawyer to interview a prisoner by misrepresenting himself as a friend of the prisoner. Like the court in *Ong Ying Ping*, in our view, it is unarguable that the respondent's misconduct in misrepresenting his relationship with the prisoner was unbefitting an advocate and solicitor as an officer of the court and as a member of an honourable profession. If the respondent believed that the prison authorities were wrong or unreasonable in their stand, he should have written to them further, setting out his arguments cogently to try to persuade the said authorities that he was entitled to interview Baldwin. Alternatively, he should have sought a meeting with those in charge of the prison to try and persuade them that his request was a perfectly legitimate one and should be acceded to. If all such means failed to convince the said authorities to change their stand, he, as an advocate and solicitor, must surely know that his recourse is to the courts.

25 An advocate and solicitor is expected to uphold his client's interests fearlessly and to the best of his ability but that duty most definitely does not include taking the law into his own hands or warrant the giving of misleading information to public officers. Seeking to achieve the right outcome by knowingly employing illegitimate means is anathema to all notions of the rule of law, particularly in the case of someone schooled in law.

26 In the absence of any explanation from the respondent, we could not help but infer that his intention was to mislead the prison officers involved and to achieve his aim by such subterfuge. That, in our opinion, is not merely misconduct unbefitting an advocate and solicitor but appears also to be dishonesty in his professional conduct. He was at the prison as Baldwin's lawyer but verbally disguised himself as Baldwin's friend. That is, at the very least, suppression or concealment of the truth if not an outright lie. Assuming that he was, in truth, Baldwin's friend (and we have absolutely no evidence about that), even then, he was aware that the prison authorities did not permit him to interview Baldwin in his capacity as a lawyer. It would have been incumbent on the respondent in that situation to declare that he was a friend but was also there to take a statement in a professional capacity.

27 Section 83(1) of the Act provides a range of sanctions that may be imposed on an errant advocate and solicitor. The most severe one is of course that of striking off the roll, followed by suspension from practice for a period of up to five years. The most lenient sanction is the censure. Unlike *Ong Ying Ping,* where the court took into account Ong's past conduct in determining the order to make against him (which the court was entitled to do under s 83(5) of the Act), the respondent here chose not to turn up before the Disciplinary Committee or even to write a letter of explanation and/or mitigation. He has done the same in the proceedings before the court. We therefore have no material before us to consider in his favour. We could only note that at the time of the incident in September 2001, he had only slightly more than three years' experience as an advocate and solicitor.

28 As explained earlier at [16], this case came to be heard after *Ong Ying Ping* although it was scheduled for hearing one day before the hearing in that case. The incident in the present case (on 6 September 2001) also occurred before that in *Ong Ying Ping* (on 10 October 2001). We therefore do not consider the respondent's case here as a "second" incident of this nature before the court, warranting a more severe sanction. It appears from the records of the Supreme Court that the last practising certificate taken out by the respondent was in April 2001, which would have been valid until March 2002. The respondent has therefore not been in practice for at least three years. Bearing in mind the public interest considerations set out in *Ong Ying Ping*, the sanction imposed therein on broadly similar material facts, the apparent nonchalance of the respondent and the fact that there are virtually no mitigating factors, we decided to suspend the respondent from practice for four years. We also ordered him to pay the Law Society's costs of these proceedings.

29 While there have been aberrations in the legal profession, as indeed in any other profession when the number of members grows, we take comfort in the fact that most advocates and solicitors are honourable men and ladies who uphold the law zealously and whose words may be taken at face value.

Defendant suspended from practice for four years
and to pay costs to the Law Society

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