Law Society of Singapore v Ong Lilian
[2005] SGHC 187

Case Number : OS 244/2005

Decision Date : 30 September 2005

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; Lai Siu Chiu J; Tan Lee Meng J

Counsel Name(s) : Aziz Tayabali (Aziz Tayabali and Associates) for the applicant; The respondent absent

Parties : Law Society of Singapore — Ong Lilian

Legal Profession – Professional conduct – Show cause action – Advocate and solicitor of 31 years' standing convicted of theft in dwelling – Whether advocate & solicitor unfit for legal profession – Whether offence not done in capacity as lawyer relevant – Whether appropriate for court to grant application – Appropriate penalty – Section 83(1), 83(2)(a), 94A & 98(1) Legal Profession Act (Cap 161, 2001 Rev Ed)

30 September 2005

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

1 This was an application by the Law Society of Singapore ("the Law Society") under s 98 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the LPA") that the respondent, Lilian Ong, an advocate and solicitor, be required to show cause arising from her conviction in a court of law of one count of theft in a dwelling place, punishable under s 380 of the Penal Code (Cap 224, 1985 Rev Ed) and for which she was sentenced to imprisonment for four weeks.

The facts

2 The respondent was admitted as an advocate and solicitor on 16 January 1974. At the material time, she was practising under the style of M/s Lilian Ong & Associates.

3 On 14 March 2000, at about 5.15pm, at the Tangs department store at Orchard Road, Singapore ("the Store"), the respondent was observed to be behaving suspiciously by a security officer of the Store. She was then at the basement level and was observed to have placed two cheese slicers into her handbag. She then picked up a kettle and wrapped it with a pink sweater, exposing the bottom of the kettle. Subsequently, she walked briskly out of the Store towards the underpass. Soon thereafter, she was stopped by the security officer. The total value of the items taken amounted to $179.80.

4 The respondent claimed trial to the charge of theft brought against her under s 380 of the Penal Code. Her defence was that she did not intend to steal the items and that she just inadvertently stepped out of the Store while talking on the handphone to her son. She claimed that she suffered from loss of memory and concentration due to depression and sudden cessation of medication, and did not remember leaving the Store. On 31 May 2001, the district judge rejected her evidence and convicted her on the charge. On 4 June 2001, the respondent was sentenced to two weeks' imprisonment. On the appeal of the Public Prosecutor, this sentence was, on 30 October 2001, enhanced by the High Court to four weeks.

Show cause

5 On 16 March 2005, on the application of the Law Society, an order of court was obtained, pursuant to ss 94A and 98(1) of the LPA, requiring the respondent to show cause. Section 94A(1) provides that "where an advocate and solicitor has been convicted of an offence involving fraud or dishonesty, … the Society shall, without further direction or directions, proceed to make an application in accordance with section 98". There can be no doubt that a conviction for an offence under s 380 of the Penal Code involved dishonesty, as dishonesty is an essential ingredient of the offence.

6 Section 83(1) of the LPA provides that on due cause being shown, the advocate and solicitor shall be liable to be "struck off the roll or suspended from practice for any period not exceeding 5 years or censured". Under s 83(2)(*a*), due cause may be shown by proof that the advocate and solicitor has been convicted of a criminal offence "implying a defect of character which makes him unfit for his profession". By virtue of s 83(6) of the LPA, the respondent's conviction must be accepted as "final and conclusive" and may not be opened to question: *eg*, see *Law Society of Singapore v Tham Yu Xian Rick* [1999] 4 SLR 168 ("*Tham Yu Xian Rick*") at [12]. On the facts of the present case, there can be no gainsaying that the respondent, having been convicted of an offence involving dishonesty, showed a defect of character which renders her unfit for an honourable profession.

7 A case which is almost on all fours with the present is *Law Society of Singapore v Amdad Hussein Lawrence* [2000] 4 SLR 88 ("*Hussein Lawrence*"). The respondent there was convicted, following his plea of guilt, of having committed theft of several items from a supermarket of a total value of $478.50 and was sentenced to two months' imprisonment. Except for the difference in the value of the items taken and the imprisonment term, the nature of the offences in *Hussein Lawrence* and the present case are identical. There, this court held that the conviction implied a defect of character which rendered him unfit for the profession and ordered that he be struck off the roll. The court also held that the fact that the offence was not committed by the respondent in his capacity as a solicitor was wholly irrelevant: see [9] and [14] of the judgment in the case, reaffirming a point made in earlier decisions, *eg*, *Law Society of Singapore v Wee Wei Fen* [2000] 1 SLR 234 ("*Wee Wei Fen*") at [28].

Penalty to be imposed

8 What remains is the question of the appropriate penalty to be imposed on the respondent. We ought to mention that the respondent here chose not to appear to show cause. Numerous attempts at serving the papers relating to these proceedings on the respondent personally at her various known addresses proved unsuccessful. Eventually, an order of court was obtained to effect service by substituted service by an advertisement in *The Straits Times* and by posting the relevant documents on the notice board of this court.

9 This court had in numerous cases declared that the disciplinary powers under s 83 of the LPA serve three distinct objects: see *Tham Yu Xian Rick* ([6] *supra*), *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR 696 ("*Ravindra Samuel*"), *Law Society of Singapore v Lau See-Jin Jeffrey* [1999] 2 SLR 215 and *Hussein Lawrence* ([7] *supra*). The first is to punish the errant solicitor for his misconduct. The second is to deter other like-minded solicitors from similar defaults in the future. The third is to protect public confidence in the administration of justice. In particular, we would reiterate the following *dictum* made by this court in *Ravindra Samuel* at [12]–[13] which emphasised the utmost importance of honesty and integrity in the legal profession:

> The administration of justice can only proceed on the basis that solicitors can place reliance upon the honesty of the solicitors with whom they deal. The public too must be able to repose

> confidence in the profession which plays so indispensable a part in the administration of justice. Similarly, the courts of this country must be able to depend on the honesty and integrity of all practitioners appearing before them and to expect that they will maintain the highest standards of personal honesty and integrity in their dealings with the courts.
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> There is therefore a serious responsibility on the court, a duty to itself, to the rest of the profession and to the whole of the community, to be careful not to accredit any person as worthy of public confidence and therefore fit to practice [*sic*] as an advocate and solicitor who cannot satisfactorily establish his right to those credentials. In the end therefore, the question to be determined is whether the solicitor in question is a fit and proper person to be an advocate and solicitor of the court, and the orders to be made are to be directed to ensuring that, to the extent that he is not, his practice is restricted.

10 In *Bolton v Law Society* [1994] 1 WLR 512, Sir Thomas Bingham MR said that in cases of proven dishonesty, the court would almost invariably, no matter how strong the mitigation advanced by the solicitor, order that he be struck off the roll. This approach was adopted by this court in *Ravindra Samuel* where we declared that (at [15]) that "where a solicitor has acted dishonestly, the court will order that he be struck off the roll".

11 We recognise that the total value of the items which the respondent stole in the present case was not large and she was only sentenced to four weeks' imprisonment. While the penalty imposed by the criminal court is a relevant consideration (see *Wee Wei Fen* [7] *supra* at [32]), and would go to show how gravely the trial court viewed the offence, it is not determinative of how a disciplinary body, like this court, should view the misconduct, especially where dishonesty was clearly present. In our opinion, the following passage from *Wee Wei Fen* at [39] is an accurate reflection of the position:

> [I]n a case where the court is bound to consider the appropriate order to be made in respect of an advocate and solicitor convicted of a criminal offence – particularly one involving dishonesty – the paramount considerations must be that of the protection of the public and the preservation of the good name of the profession. Certainly the court will give its consideration to the mitigating circumstances in each individual case but it can do so only so far as is consistent with the above two related objectives: see *Re Knight Glenn Jeyasingam*, supra at p 537. In *Tham Yu Xian Rick*, we held, following *Bolton v Law Society*, supra at p 492, that considerations which ordinarily weigh in mitigation of punishment have less effect on the exercise of the disciplinary jurisdiction than on sentences imposed in criminal cases as show cause proceedings are primarily civil and not punitive in nature. In any case, the weight to be attached to a plea in mitigation in disciplinary proceedings is negligible where the case is one involving proven dishonesty, as striking off will often be the consequence as a matter of course.

12 Unlike in *Hussein Lawrence*, where the respondent expressed his remorse for bringing the profession into disrepute by his conduct and also sought to explain his conduct by saying that he was then under considerable stress and was under medication, the respondent here chose not to make any mitigation at all. However, even if she had, for the reasons alluded to above, we did not think it would really have made a difference. Indeed, in *Hussein Lawrence*, this court further affirmed that work pressure should never be an excuse for a lawyer to act dishonestly or fraudulently: that excuse, if allowed, would have been a slippery slope which would undoubtedly lead to a deterioration of standards relating to integrity and honesty and lower the reputation of the profession in the eyes of the public.

13 In the result, we ordered that the respondent be struck off the roll of advocates and

solicitors. She was also required to pay the costs of the Law Society.