Ong Beng Leong v Public Prosecutor (No 2)
[2005] SGHC 35

Case Number : Cr M 1/2005

Decision Date : 22 February 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Mimi Oh (Mimi Oh and Associates) and Ganga d/o Avadiar (Allen and Gledhill) for the applicant; Winston Cheng and Aaron Lee (Deputy Public Prosecutors) for the respondent

Parties : Ong Beng Leong — Public Prosecutor

Criminal Procedure and Sentencing – Criminal references – Application for extension of time to file application for criminal reference – Whether High Court having jurisdiction to grant extension of time – Section 60(2) Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

Criminal Procedure and Sentencing – Criminal references – Application for further stay of sentence pending possible application for criminal reference – Whether substantive merits of anticipated application relevant consideration – Section 60(1) Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

22 February 2005

Yong Pung How CJ:

1 This was a criminal motion related to my decision in *Ong Beng Leong v PP* [2005] SGHC 22. On 11 January 2005, I had dismissed the applicant's appeal against his conviction on ten charges of using false documents with intent to deceive his principal, an offence under s 6(c) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"). However, I reduced his sentence from six months' imprisonment to six weeks' imprisonment, and allowed it to commence on 11 February 2005, after the Lunar New Year. On 1 February 2005, the applicant filed the present motion for his sentence to be stayed pending a possible criminal reference to the Court of Appeal. I dismissed his application and now give my reasons.

Application for stay

2 The applicant had applied for his sentence to be stayed pending the extraction of the Notes of Evidence and Grounds of Decision of his appeal, in order to "consider" making an application to refer questions of law to the Court of Appeal under s 60(1) of the Supreme Court of Judicature Act (Cap 322, 1985 Rev Ed) ("SCJA"). Section 60(1) provides that:

> **Reference to Court of Appeal of criminal matter determined by High Court in exercise of its appellate or revisionary jurisdiction**
>
> 60.—(1) 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.

3 I was well aware of the fact that the present motion was not an application under s 60 of

the SCJA, but was merely a request for a stay pending a possible application under s 60. However, this did not mean that the merits of the anticipated application under s 60 were irrelevant to my decision in this case. On the contrary, before I could grant the applicant a further stay on his sentence, he had to make a good arguable case that there were real questions of law of public interest that warranted the Court of Appeal's intervention. I could not simply accept that he had a substantive case under s 60 and grant him a stay as a matter of course. This would be a recipe for disaster, as every unsuccessful appellant would just need to make a similar application – however unmeritorious – to delay the commencement of his sentence. Before I could grant him a stay, the applicant had to prove that he had a good arguable case for a criminal reference under s 60.

4 Unfortunately, both of the applicant's counsel were sorely unprepared to deal with the merits of his future application under s 60, leaving me to evaluate the strength of his case from his affidavit alone. The applicant's affidavit suggested that he intended to rely on the following questions of law for his s 60 application:

(a) whether the element of dishonesty is an essential ingredient of the offence under s 6(c) of the PCA; and

(b) whether the words "or other documents" in s 6(c) refer only to documents *inter partes*.

5 The principles governing an application under s 60 of the SCJA are well established: see *Abdul Salam bin Mohamed Salleh v PP (No 2)* [1990] SLR 301; affirmed in [1991] SLR 235; *Chan Hiang Leng Colin v PP* [1995] 1 SLR 687; *PP v Bridges Christopher* [1998] 1 SLR 162. Before an application under s 60 will be allowed, the following requirements must be satisfied:

(a) there must be a question of law;

(b) the question of law must be one of public interest and not of mere personal importance to the parties alone;

(c) the question must have arisen in the matter dealt with by the High Court in the exercise of its appellate or revisionary jurisdiction; and

(d) the determination of the question by the High Court must have affected the outcome of the case.

6 Whether a question of law is of public interest depends on the facts and circumstances of each case. Even if the above requirements are met, the court still retains a residual discretion to refuse an application made by any party other than the Public Prosecutor. I have repeatedly stressed that the discretion under s 60 of the SCJA must be exercised sparingly. As I explained in *Ng Ai Tiong v PP* [2000] 2 SLR 358 at [10]:

> This is to give recognition and effect to Parliament's intention for the High Court to be the final appellate court for criminal cases commenced in the subordinate courts. The importance of maintaining finality in such proceedings must not be seen to be easily compromised through the use of such a statutory device. In *Abdul Salam bin Mohamed Salleh v PP* [1990] SLR 301, 311; [1990] 3 MLJ 275, 280, Chan Sek Keong J [as he then was] had cautioned aptly that:
>
> > [Section 60, SCJA] is not an ordinary appeal provision to argue points of law which

> are settled or novel points which can be decided by the application or extension of established principles of law or the application of statutory provisions which have been authoritatively construed by higher courts.
>
> Hence, it is imperative that s 60 of the SCJA is utilised only in exceptional cases so as to ensure that the proper purpose of the section is not abused to serve as a form of 'backdoor appeal'.

7 With these principles in mind, I turned to consider the possible questions of law raised by the applicant in his affidavit.

First question: element of dishonesty

8 In his appeal, the applicant had already canvassed this exact issue before me. Relying on the following remarks of L P Thean J (as he then was) in *Knight v PP* [1992] 1 SLR 720 at 728, [20], the applicant sought to argue that dishonesty was one of the essential elements of an offence under s 6(c) of the PCA:

> The charge under s 6(c) of the Act does not imply any corruption at all. The word "corruptly" which is present in paras (a) and (b) of s 6 is absent in para (c). But *the offence under s 6(c) does imply an element of dishonesty. In effect, it is an offence of cheating under a different statutory provision.* On the facts admitted by the appellant, he could be charged for cheating under s 417 or s 420 of the Code. [emphasis added]

9 I had conclusively rejected the applicant's contention in my earlier Grounds of Decision, and there was no indication that the applicant had any new arguments to support his position. On the contrary, his affidavit simply rehashed the same points that I had already considered and dismissed. From a careful reading of Thean J's judgment, it was evident to me that he was merely remarking on the difference between an offence under s 6(c) of the PCA and the offences of corruption under ss 6(a) and 6(b), and noting the similarities between s 6(c) and the cheating offences under the Penal Code. There was no basis for reading his *obiter dicta* as authority for the proposition that s 6(c) of the PCA was intended to be a re-enactment of the cheating offences. As I had reiterated in my earlier Grounds of Decision, the applicant's position was unsustainable as a matter of common sense. The offences were clearly enacted as two separate criminal offences with very different legal elements, and the applicant failed to offer even a single reason to explain why Parliament would choose to provide for two separate offences if they were intended to be identical in every respect, especially when the provisions were so differently worded.

10 At the end of the day, the applicant could not dispute that s 6(c) made no mention of "dishonesty" as an element of the offence, and the starting point for interpreting any statute must be the words of the statute itself. As I had conclusively dealt with all of the applicant's arguments in my earlier Grounds of Decision, there was no real "conflict of authority" as alleged by the applicant. In the circumstances, I failed to see how this issue raised any question of law of public interest.

Second question:* inter partes *documents

11 The second suggested "question of law" submitted by the applicant was also a non-issue. It has been established since *Knight v PP* ([8] *supra*) that, following the English Court of Appeal's decision in *R v Tweedie* [1984] QB 729, the words "or other documents" in s 6(c) of the PCA should be read to mean *inter partes* documents. I accepted this in my Grounds of Decision, and there was

therefore no existing question of law for the Court of Appeal to decide.

12 In so far as the applicant was suggesting that the false quotations in his case were not *inter partes* documents, reference need only be made to [36] of my Grounds of Decision:

> It was undisputed that Ong and Khoo of Sin Hiaptat had forged the quotations before submitting them to TRMC. As there were third parties actively involved in generating the false documents, the quotations clearly came within the scope of s 6(c). As Thean J specifically stated at 727, [19] of his judgment in *Knight v PP*, the offending documents must be "*inter partes either in creation or use*". The highlighted words clearly indicate that third party involvement in the creation of the false documents is sufficient for a charge under s 6(c) to be made out.

Conclusion

13 Counsel for the applicant repeatedly pleaded for my indulgence in allowing this application, but I failed to see any basis for the grant of a stay. It would be futile for me to stay the applicant's sentence, since it was plain that there were no pressing questions of law of public interest, and any further application under s 60 of the SCJA would be doomed to failure.

Application to extend time

14 Under s 60(2) of the SCJA, an application to refer a question of law to the Court of Appeal should be filed "within one month *or such longer time as the Court of Appeal may permit*" [emphasis added]. In the same motion before me, the applicant had also requested for a two-week extension of the one-month filing period. However, the enphasised words of the provision clearly indicated that it was for the Court of Appeal to grant any extension of time.

15 Even if I had the jurisdiction to grant an extension of time, there was simply no reason for me to accord the applicant this further indulgence. The applicant failed to provide any reasons to explain why the one-month statutory filing period under the SCJA was insufficient. His appeal was heard on 11 January 2005, and I issued my Grounds of Decision on 1 February 2005. The applicant had more than a week to peruse the Grounds of Decision and prepare his contemplated application under s 60. In the circumstances, I saw little justification in granting him a further two weeks, especially since it appeared that his s 60 application was plainly unsustainable in any case.

Motion dismissed.