Chee Soon Juan v Public Prosecutor
[2007] SGHC 155

Case Number : MA 33/2007

Decision Date : 20 September 2007

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Alfred Dodwell (Alfred Dodwell) for the appellant; Leong Wing Tuck (Attorney-General's Chambers) for the Prosecution

Parties : Chee Soon Juan — Public Prosecutor

Criminal Law – Statutory offences – Bankruptcy Act – Whether bankrupt attempting to leave country without requisite permission – Whether mistaken belief that application for permission not rejected valid defence – Sections 131(1)(b), 131(2) Bankruptcy Act (Cap 20, 2000 Rev Ed)

20 September 2007

Choo Han Teck J:

1 The appellant, adjudicated a bankrupt on 10 February 2006, was charged under s 131(2) of the Bankruptcy Act (Cap 20, 2000 Rev Ed) ("the Act") read with s 511 of the Penal Code (Cap 224, 1985 Rev Ed) for attempting to leave Singapore on 1 April 2006 without the permission of the Official Assignee. He was convicted by the District Court on that charge on 26 February 2007 and fined $4,000, and in default, a term of imprisonment of three weeks. He appealed against the conviction and sentence. The trial judge accepted the prosecution's evidence that the appellant had intended to leave the country when he did not have the permission from the Official Assignee to do so. Counsel for the appellant, Mr Alfred Dodwell ("Mr Dodwell") made a number of points in his submission against this finding by the trial judge. One such point was that the judge below had erred in not accepting that the appellant acted on a mistake of fact in that he had thought, erroneously, that his application for permission to leave the country had not been rejected. Mr Dodwell also submitted that the electronic mail ("email") correspondence between the appellant and the officers at the Insolvency and Public Trustee's Office had created confusion in the appellant's mind as to the status of his application.

2 I was not persuaded that there was any error in the trial judge's findings of fact. Section 131(1)(b) of the Act requires a bankrupt to obtain the Official Assignee's permission to leave the country. This law is not complied with if the bankrupt did not obtain the requisite permission even if he thought that he had. The Official Assignee's permission is a condition required for a bankrupt to leave the country and so under s 131(2) of the Act an offence is committed when a bankrupt leaves or tries to leave the country without the Official Assignee's permission. The burden is not on the immigration authority to stop a bankrupt from leaving the country; it is on the bankrupt to obtain permission to leave. Section 131(2) is virtually a strict liability offence in the sense that the Official Assignee's permission is either given or not given, and that is a fact that can be easily established. However, bizarre situations may arise in which a bankrupt might have travelled without permission under circumstances in which a mistake of fact could be argued in his defence. The evidence in the present appeal, however, did not suggest that this had happened. The Deputy Public Prosecutor, Mr Leong Wing Tuck ("Mr Leong") drew my attention to the record that showed that the appellant was properly and clearly notified of his obligations as a bankrupt and was told of the various restrictions imposed on a bankrupt by law, including the need for permission to travel. The trial judge

was of the view that the prosecution had proven that the appellant intended to travel when he had no reasonable grounds to believe that he had been given permission to do so. He was not satisfied that the appellant's claim of a mistaken belief was made in good faith. I can find no justification to overturn any of the trial judge's findings of fact.

3 The appellant raised two major questions of law in his appeal. The first was described by Mr Dodwell as the trial judge's failure to accept that there was a violation of Article 12 of the Constitution of the Republic of Singapore. Article 12(1) provides that "All persons are equal before the law and entitled to the equal protection of the law". In relation to this ground, Mr Dodwell also argued that the trial judge had wrongly dismissed the appellant's application under s 56A of the Subordinate Courts Act (Cap 321, 2007 Rev Ed) to stay the proceedings and refer this constitutional point to the High Court. This is a provision by which a subordinate court judge may stay proceedings before the court so as to enable a question requiring the interpretation of a Constitutional provision to be determined at the High Court. This provision does not require the subordinate court to order a stay as a matter of course. If it is thought, for example, that there was no issue that required an interpretation of a constitutional provision, or that the constitutional question was oblique and might not have an effect on the proceedings of the trial, the judge will not be obliged to make the order for reference to the High Court.

4 The trial judge rejected the appellant's argument that the Official Assignee's protocol for considering a bankrupt's application for permission to leave the country was in breach of Article 12. The appellant had not proven that that protocol was used in refusing him permission. The evidence seemed to be that, at the time of the commission of the offence, no decision had been conveyed to the appellant that permission was denied. Even if the protocol was unconstitutional, it had nothing to do with the appellant's commission of the offence. More precisely, even if the protocol was unconstitutional, the appellant would not have been justified in leaving the country. He has to first show and have the court declare that the protocol was unconstitutional, because every rule, regulation, and law is deemed valid until declared otherwise by the court. Whether the protocol was valid or not and whether it had been fairly applied to the appellant is a matter of a separate legal inquiry. It cannot be inquired in the midst of a criminal prosecution. It is an entirely separate inquiry concerning different facts and points of law. In the circumstances, I think that the trial judge was right to hold that there was no constitutional issue that merited a reference to the High Court under s 56A of the Subordinate Courts Act in the trial before him.

5 Mr Dodwell's second argument in law was based on the claim that the act of the appellant did not amount to an "attempt" in law. Mr Dodwell's point was that only a completed act could be contemplated so far as s 131 was concerned. Hence, an inchoate act constituted no offence, that is to say, it was all or nothing. No argument was constructed to explain why a person cannot attempt to leave the country when he had no permission to do so. If there were any difficulty, it lies in the determination of which act constituted an attempt or at which point might one conclude that an attempt had been made. The facts accepted by the trial judge were that by 28 March 2006, permission had not yet been given to the appellant to attend a "World Movement for Democracy" function in Turkey. However, on 1 April 2006, the appellant was stopped at the airport and his passport was then confiscated by the authorities. Although the trial judge's grounds of decision did not state whether the appellant had purchased a flight ticket and had presented his passport to the immigration authority with the view of boarding his plane, Mr Dodwell's written submission indicated that the appellant had done so because he asked, rhetorically,

> Is there a clear, unambiguous notation in any document that the appellant received that states that the mere presentation of the passport at Changi International Airport is tantamount to a crime?

An appellant has the burden of showing that the evidence does not support the finding of fact made by the trial judge. In this case, the trial judge had found that there was an attempt to leave the country. In this appeal, Mr Dodwell did not refer to any evidence to show or explain why that finding was wrong. Mr Dodwell's written submission on appeal referred to facts that sufficiently established that the appellant had made an attempt to leave the country. He stated,

> [The appellant] is unaware that [the Official Assignee] may allow and provide permission that could be communicated directly to ICA (sic), and that he could find out at the airport by presenting the passport. A choice colloquial term "try your luck" aptly captures the mindset of the appellant. He was of the view that if he was blacklisted from travel, he will not be permitted to leave, and he would return home. Conversely, in this case, he proceeded to purchase his tickets.

There seemed to be sufficient evidence to justify the trial judge's finding that the appellant had attempted to leave the jurisdiction without the requisite permission being granted. Mr Dodwell also conceded that there was no doubt that the appellant had intended to leave Singapore but the issue was whether he had intended to commit a crime in so doing. The requisite mental element in an offence under s 131 of the Act consists not only of an intention to leave the country, but also the bankrupt's knowledge that he did not have permission from the Official Assignee to do so. The trial judge found both elements to have been present. This point was relevant only in respect of the mental element of the offence, but in the circumstances, was not pertinent to the issue of an attempt to leave, as this would have included the mental element as to the offence as well as the physical act of making an attempt to leave the country. Accordingly, the appellant's appeal on the ground that there was no attempt cannot succeed.

6 Lastly, I shall consider Mr Dodwell's submission that the trial judge took into account tainted evidence in that he had allowed certain email correspondence to be admitted into evidence when he should not have. The reason that Mr Dodwell objected to those email messages was that they were produced after defence counsel had already started cross-examination of the prosecution witness, and in which event, it was improper for the DPP at trial (Miss Kamala) to have been in communication with that witness. Mr Dodwell submitted that the email could not have been produced without the witness having conferred with Miss Kamala. On appeal, Mr Leong explained that the communication was an "innocent infection" because the witness had told the court that there was no email from the appellant concerning a meeting on 28 March 2006, but having discovered later in the evening that there was some relevant email, she brought it to Miss Kamala's attention. It is important that counsel do not communicate with his witness when the latter is being cross-examined. I would think that that rule should be complied strictly except for very limited exceptions. One exception would be to bring to counsel's attention evidence that was contrary to an earlier testimony and for the purpose of bringing that evidence to the attention of the court. This is important in a criminal case because the evidence might exonerate the accused person. In such a situation, the prosecution has a duty to refer that evidence in court. The circumstances under which the email messages were produced did not affect the question of admissibility since there was no evidence or hint that the evidence was not authentic. The trial judge then adjudged it to be reliable, and that was part of his findings of fact. The judgment below cannot be faulted on this issue.

7 Mr Dodwell submitted that the fine of $4,000 and in default, three weeks imprisonment, was excessive but did not present any convincing argument why that was so. Under s 131(2) of the Act, the maximum penalty for this offence is a fine of $10,000 or imprisonment for two years, or both. Sentencing within this statutory limit is a matter of the trial judge's discretion and, if he had taken into account all the facts and circumstances of the case, then, unless the sentence is shown to be manifestly inadequate or excessive, the sentence should not be varied only on account that it was

lower or harsher than what other courts might have imposed. A $4,000 fine in this case was neither manifestly inadequate nor manifestly excessive.

8 The appellant had not persuaded me that there was any merit in fact or law to set aside his conviction or sentence, and I therefore dismissed his appeal.