Public Prosecutor v Zurina bte Khairuddin
[2009] SGHC 11

Case Number : MA 270/2008

Decision Date : 09 January 2009

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Jeyendran Jeyapal (Attorney-General's Chambers) for the appellant; Respondent in person

Parties : Public Prosecutor — Zurina bte Khairuddin

Criminal Procedure and Sentencing – Sentencing – Date of commencement – Person undergoing reformative training sentenced to imprisonment – Whether sentence to commence immediately or upon completion of reformative training – Schedule D Criminal Procedure Code (Cap 68, 1985 Rev Ed)

9 January 2009

Choo Han Teck J:

1 The respondent Zurina Binte Khairuddin was sentenced to undergo reformative training in October 2005. In April 2008, she was placed in a halfway house for the supervision phase of her sentence. Sometime in May 2008, the respondent absconded from the halfway house. She was also alleged to have committed an offence of criminal breach of trust. A recall order was then issued and she was taken back into custody. The respondent was then charged for the offence of criminal breach of trust, for which she subsequently pleaded guilty to. The district judge sentenced her to three weeks' imprisonment and ordered that the term of imprisonment to commence at the expiry of the respondent's sentence of reformative training *i.e.* October 2009: see *PP v Zurina Binte Khairuddin* [2008] SGDC 357. The Prosecution then appealed on the ground that the district judge had erred in law in ordering for the term of imprisonment to commence at the expiry of the respondent's sentence of reformative training. The Prosecution's grounds of appeal were threefold: (1) paragraph 4 of Schedule D of the Criminal Procedure Code ("CPC") requires that a sentence of imprisonment commence immediately and not after the conclusion of a sentence of reformative training; (2) *Ng Kwok Fai v PP* [1996] 1 SLR 568 ("*Ng Kwok Fai*") ought to be distinguished; and (3) s 234 of the CPC has no application *vis-à-vis* a sentence of reformative training.

2 I agree with the Prosecution's submissions. Section 13(1) of the CPC provides that a sentence of reformative training is passed "in lieu of any other sentence" and Schedule D of the same states that:

> If any person while under supervision, or after his recall to a reformative training centre, as aforesaid, is sentenced to corrective training or reformative training his original sentence of reformative training shall cease to have effect; and if any such person is so sentenced to imprisonment, any period for which he is imprisoned under that sentence *shall* count as part of the period for which he is liable to detention in a reformative training centre under his original sentence. [emphasis added]

3 As pointed out by the learned Deputy Public Prosecutor, the word "shall" carries with it a mandatory connotation and the court has no discretion in the matter, in that any sentence of imprisonment must count as part of the sentence of reformative training *i.e.* it must run immediately

and in concurrence with any existing sentence of reformative training. As for s 234(1) of the CPC, which deals with a situation where a person undergoing a sentence of imprisonment is sentenced to imprisonment, I was of the view that it does not apply to a sentence of reformative training. This is because s 13 of the CPC states that a sentence of reformative training is passed "in lieu of any other sentence", and the courts have always viewed a sentence of reformative training as distinct from a term of imprisonment: see *PP v Mohammad Rohaizad bin Rosni* [1998] 3 SLR 804 at [36]–[37] where Yong Pung How CJ opined that reformative training could substitute imprisonment, caning and/or fine or any such combination which a sentencing court thought fit, and that imprisonment was retributive in purpose and was inconsistent with the purpose of reformative training, which was rehabilitative. As such, it would be wrong to conflate a sentence of reformative training with a sentence of imprisonment. Accordingly, I was of the view that s 234 of the CPC did not apply to a sentence of reformative training.

4 Paragraph 4 of Schedule D is a broadly worded one as it is applicable whenever a person undergoing supervision following his release from a reformative training centre or having been recalled is sentenced to imprisonment. *Prima facie*, it does not matter whether the offence, to which a sentence of imprisonment was imposed, is committed before or after the sentence of reformative training.

5 It is true that Yong CJ did state in *Ng Kwok Fai* at [13] that:

> Hence, if the court is of the view that the offender is amenable to reform, then there are two courses open to it. First, it can impose a nominal sentence of imprisonment on the accused for the first offence, the sentence to begin after he has completed his reformative training.

6 However, neither s 13(1) nor Schedule D of the CPC was addressed by the learned Chief Justice in *Ng Kwok Fai*. It might well be the case that if Schedule D had been brought to Yong CJ's attention, he would have qualified his observations therein. In the present case, I also noted that the district judge did acknowledge at [14] of his grounds that had Schedule D been brought to his attention, he would have made the order for imprisonment to commence immediately. That was no doubt correct. In the premises, I allowed the Prosecution's appeal and ordered that the term of imprisonment to run from the date of the sentence *i.e.* 21 October 2008.