

Salwant Singh s/o Amer Singh v Public Prosecutor
[2009] SGHC 67

Case Number : Cr M 32/2008
Decision Date : 25 March 2009
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Applicant in person; Christopher Ong Siu Jin (Attorney-General's Chambers) for the respondent
Parties : Salwant Singh s/o Amer Singh — Public Prosecutor

Courts and Jurisdiction – Court of criminal appeal – Appeal against refusal to review detention – Application to nullify registrar's decision – Request for counsel to be assigned for non-capital case – Whether applicant could rely on Supreme Court (Criminal Appeals) Rules (Cap 322, R 6, 1997 Rev Ed)

25 March 2009

Woo Bih Li J:

1 On 20 May 2003, Salwant Singh s/o Amer Singh, holder of NRIC No. S1570345H ("the Applicant") pleaded guilty in a district court to five charges of cheating under s 420 of the Penal Code (Cap 224, 1985 Rev Ed). On 11 June 2003, he was sentenced to 12 years' preventive detention. Both he and the Public Prosecutor appealed against the sentence. On 14 August 2003, the High Court allowed the prosecution's appeal and enhanced the period of preventive detention to the maximum of 20 years provided by law.

2 In Criminal Motion No. 17 of 2008 ("CM 17/2008"), the Applicant had sought the following reliefs pursuant to s 327(1)(b) and (c) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") and Article 9(2) of the Constitution:

- (a) the issuance of an order to the Superintendent of Prisons, directing the production of the applicant before the High Court;
- (b) the review of the applicant's continued and unlawful detention;
- (c) the applicant's immediate and unconditional release.

3 Section 327(1) of the CPC provides as follows:

(1) Any person —

- (a) who is detained in any prison within the limits of Singapore on a warrant of extradition under any law for the time being in force in Singapore relating to extradition of fugitive offenders;
- (b) who is alleged to be illegally or improperly detained in public or private custody within those limits; or
- (c) who claims to be brought before the court to be dealt with according to law,

may apply to the High Court for an Order for Review of Detention.

4 Article 9(2) of the Constitution provides:

Where a complaint is made to the High Court or any Judge thereof that a person is being unlawfully detained, the Court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the Court and release him.

5 On 15 August 2008, Justice Tay Yong Kwang ("Tay J") dismissed CM 17/2008. Criminal Appeal No. 8 of 2008 ("CCA 8/2008") is an appeal by the Applicant against the decision by Tay J in CM 17/2008. The appeal was filed notwithstanding s 335 of the CPC which states:

No appeal shall lie from an order directing or refusing to direct the issue of an Order for Review of Detention or from an order made under section 328 but the Court or Judge may at any time adjourn the hearing for the decision of a Court consisting of 3 or more Judges.

6 The Applicant subsequently submitted an application on 20 October 2008 to the Chief Justice under r 11(b) of the Supreme Court (Criminal Appeals) Rules Revised Edition 1997 ("SCCA Rules") to request the Chief Justice to direct that a counsel be assigned to represent him in the coming appeal under CCA 8/2008.

7 By a letter dated 21 October 2008, the Registrar of the Supreme Court replied to the Applicant to say that his request was denied as "the Court only assigns counsel to unrepresented accused persons in capital cases."

8 Subsequently, the Applicant filed Criminal Motion No. 32 of 2008 ("CM 32/2008") on 7 November 2008 for the following reliefs:

"2. NULLIFY the Registrar's ultra vires decision, as the Application he decided was addressed to the Chief Justice; and to additionally

3. SET aside the said decision, for the Registrar was not especially vested with the authority to decide the matter, and if he was, he failed to state the same to the applicant; and to then

4. DIRECT the Registrar to duly present the applicant's said Application - seeking legal aid, before the Chief Justice, who may accordingly dispose of it as he deem fit."

9 CM 32/2008 was heard by me. The crux of the Applicant's complaint was that instead of referring his earlier request for a counsel to the Chief Justice, the Registrar had wrongly replied (in the letter dated 21 October 2008) to say that "the Court only assigns counsel to unrepresented accused persons in capital cases."

10 Rule 11 of the SCCA Rules states:

11. In an appeal where the appellant is not legally represented the Registrar shall assign an advocate and solicitor to represent him —

(a) in every case where the appellant has been sentenced to death; and

(b) in any other case where the Chief Justice considers it is in the interests of justice that legal aid should be given.

11 As can be seen, Rule 11 has two different sub-rules. The Applicant's request was made under

Rule 11(b) but the Registrar's reply was based on Rule 11(a). Consequently, the reply did not actually address his request. It was because his case was not a capital one that the Applicant was requesting that the Chief Justice direct that he be provided a counsel to represent him in CCA 8/2008.

12 However, there was one hurdle which the Applicant first had to clear. He had assumed that the SCCA Rules applied to him.

13 Rule 11 refers to "the appellant". Under Rule 2 of the SCCA, an "appellant" is defined to mean: "a person who has been convicted of a criminal offence in any court and who by any written law is entitled to appeal to the Court of Criminal Appeal, and includes where the context requires a person desirous of appealing."

14 In view of s 335 CPC, the Applicant was not entitled to appeal to the Court of Criminal Appeal and, in that context, it did not matter whether he was desirous of appealing or not. Accordingly, the Applicant could not rely on Rule 11 in the first place. This made sense. Since he was not entitled to appeal, there was no question of his being represented by counsel in an appeal.

15 In the circumstances, I dismissed CM 32/2008.