Chew Eng Han *v* Public Prosecutor
[2017] SGCA 52

Case Number	: Criminal Motion No 18 of 2017
Decision Date	: 06 September 2017
Tribunal/Court	: Court of Appeal
Coram	: Andrew Phang Boon Leong JA; Judith Prakash JA; Quentin Loh J
Counsel Name(s)	: The applicant in person; Christopher Ong, Joel Chen, Grace Soh and Eugene Sng (Attorney-General's Chambers) for the respondent.
Parties	: CHEW ENG HAN — PUBLIC PROSECUTOR

Criminal Procedure and Sentencing – Criminal Motion – Question of Law of Public Interest

[LawNet Editorial Note: This was an application arising from the decision of the High Court in [2017] SGHC 71.]

6 September 2017

Andrew Phang Boon Leong JA (delivering the judgment of the court *ex tempore*):

Introduction

1 This is the second application for leave to refer questions of law of public interest to the Court of Appeal filed by the Applicant. His first application (Criminal Motion No 10 of 2017 ("CM 10/2017")) was heard and rejected by this court on 3 July 2017. We will be releasing our written grounds of decision in CM 10/2017 in due course. In our judgment, this second application is not only an abuse of process but is also devoid of merit.

Application filed out of time

2 As a preliminary matter, this application is out of time. We find that the Applicant has failed to show that any of the grounds for granting an extension of time identified in *Bachoo Mohan Singh v Public Prosecutor* [2010] 1 SLR 966 ("*Bachoo Mohan Singh*") is satisfied. In *Bachoo Mohan Singh*, this court held at [65] that in determining whether an extension of time is appropriate, the court should apply its mind to all the circumstances of the case, in particular (a) the length of the delay; (b) the sufficiency of any explanation given in respect of the delay; and (c) the prospects of the application. Having considered these factors, we are satisfied that the Applicant has identified no valid reason for granting him an extension of time. He was fully aware of the timelines when he filed CM 10/2017 and should have consolidated all the questions he sought to refer in that application. On the basis of the unwarranted delay in filing this application alone, we would have been minded to dismiss the application. For the reasons that we will explain, we also find that this application has no prospect of success.

Abusive and unmeritorious nature of the application

3 We wish to emphasise, however, that the application is plainly abusive. The Applicant cannot be allowed to drip-feed his questions through multiple applications of this nature. The principle of finality in the judicial process would be defeated if an accused person were allowed to spin out

applications for leave to refer questions *ad infinitum*, prolonging the criminal proceedings indefinitely and delaying the commencement of his sentence. We reiterate that the criminal reference procedure does not provide a means for a back-door appeal and any attempt to use it as such is abusive *per se*. The fact that the Applicant is a litigant-in-person does not provide him with a warrant to engage in abusive conduct.

4 In addition, we find that the question that the Applicant presently seeks leave to refer is essentially a rehash of a question that he posed in CM 10/2017. He argues at para 22 of his supporting affidavit for the present application that (and I quote) "a new precedent has been judicially pronounced, whereby a person can be convicted for misappropriation … even where that person has not used property for himself or a third party, and in spite of him having applied the property for the owner's (unauthorised) use". According to the Applicant, this ruling is in breach of Art 11(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution") and the principle of *nullum crimen nulla poena sine lege* ("the *nullum* principle") embodied therein. The Applicant made the *exact same argument* at paras 18–20 of his written submissions in his earlier application in CM 10/2017, where he stated that the High Court's definition of misappropriation contravenes Art 11 of the Constitution under which "[n]o person shall be punished for an act or omission which was not punishable by law when it was done or made". His earlier application was dismissed by this court in its entirety and it is abusive for the Applicant to bring a fresh application on the same grounds. In *Kho Jabing v Public Prosecutor* [2016] 3 SLR 1259, this court found at [3] that it was an abuse of process for an applicant to make an argument in his application, withdraw the argument by amending the application, and then seek to reintroduce the argument in a fresh application. It is *a fortiori* abusive for the Applicant in this case to run the same argument in *two consecutive* applications when it was already considered and rejected in his first application.

5 More importantly, as we stated in our oral judgment dismissing CM 10/2017 on 3 July 2017, a *three-Judge coram* of the High Court has given full consideration to whether each of the elements of the offence of criminal breach of trust was satisfied. Leaving aside the question of whether the accused persons were "agents" under the aggravated offence in s 409 of the Penal Code (Cap 224, 2008 Rev Ed and the earlier 1985 Rev Ed) (which is the subject of a separate criminal reference (Criminal Reference No 1 of 2017)), the High Court was *unanimous* in its decision that the elements of the offences of criminal breach of trust and falsification of accounts were satisfied. Their judgment is *final and authoritative* on these issues. Hence, we see no basis for leave to be granted to bring this or any further criminal references on the same subject matter. Such applications would be nothing more than a blatant abuse of process and will not be entertained by this court.

6 The abusiveness of the application is also reflected in its *utter lack of merit*. The Applicant's submission is based on a clear misreading of the decisions of the courts below. The courts below considered that this case is "*sui generis*" and "unique" because, unlike other cases, the accused persons were not motivated by personal gain and had acted according to what they thought "would ultimately have advanced the interests of [City Harvest Church]". But the courts made it clear that this had *no bearing* on their determination as to whether the accused persons should be *convicted*, since the desire to further the purposes of the church and the lack of any wish for personal gain: (a) goes only to their *motive* rather than intention; and (b) has little to do with the question of whether the accused persons' use of the church funds fell outside the scope of authorised uses, which is the focus of the present application. The courts below also had no doubt that, in addition to the *actus reus* of misappropriation, the *mens rea* of dishonesty was also made out in this case as the accused persons, including the Applicant, had acted with the dishonest intention to cause wrongful loss to the church even though they were not motivated by personal gain. Since the reasons why the High Court and the District Court identified this case as *sui generis* are therefore irrelevant to both

the *mens rea* and the *actus reus* of the offence, they have nothing to do with the *convictions* of the accused persons. Consequently, Art 11 of the Constitution and the *nullum* principle are simply not engaged.

7 We therefore dismiss this application.