Wu Tze Kok v Public Prosecutor
[2001] SGHC 302

Case Number : MA 166/2001

Decision Date : 10 October 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Appellant in person; Ravneet Kaur (Deputy Public Prosecutor) for the respondent

Parties : Wu Tze Kok — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Imprisonment in default of payment of fines – Power of court to impose default imprisonment – Whether power extends to refunding fine already paid and allowing default sentence to be served instead – s 224(b)(iv), (e) & (f) Criminal Procedure Code (Cap 68) – s 19(a) Supreme Court of Judicature Act (Cap 322, 1999 Ed)

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The facts

The appellant, Wu Tze Kok, was charged in the subordinate court for two separate traffic offences. The first charge was for the offence of reversing unnecessarily along an expressway on 1 June 1998, an offence under r 7 of the Road Traffic (Expressway Traffic) Rules (Cap 276, R 23, 1990 Ed). The second charge was for failing to wear a seat belt while driving a motor vehicle on 21 July 1998, an offence under r 4(1) of the Road Traffic (Motor Vehicles, Wearing of Seat Belts) Rules (Cap 276, R 34, 1993 Ed). Both offences occurred on the Central Expressway while the appellant was driving his taxi SHB572K. The appellant was given a $50 fine for the first offence. For the second offence, he was given a $120 fine and three demerit points. He was required to attend court on 20 July 1998 and 8 September 1998 to answer to his first and second charges respectively. The appellant failed to attend court on both nights. Accordingly, the court issued warrants for his arrest and offered bail at $1,000 with one surety in respect of both cases. The appellant`s case was called for hearing on 6 June 2001.

As a result of representations made by the appellant and his Member of Parliament, the prosecution applied to withdraw the two charges against the appellant. This was after the appellant paid the composition fine for unnecessarily reversing along the expressway, and accepted a stern warning for the remaining charge for failing to wear a seat belt while driving a motor vehicle. Accordingly, at the hearing on 6 June 2001 the court allowed the application for a discharge amounting to an acquittal against the appellant in respect of the two charges.

However, as the appellant had failed to turn up in court on 20 July 1998 and 8 September 1998 when he was mandated to do so, he was required to show cause for his failure to attend court. Section 133(6) of the Road Traffic Act (Cap 276, 1997 Ed) provides:

> *Upon a person arrested in pursuance of a warrant issued under subsection (5) being produced before it, a court shall proceed as though he were produced before it in pursuance of section 136 of the Criminal Procedure Code (Cap 68) and shall, at the conclusion of the proceedings, call upon him to show cause why he should not be punished for failing to attend in compliance with the notice served upon him and if cause is not shown may order him to pay such fine not exceeding $2,000 as the court thinks fit or may commit him to prison for a term not exceeding 2 months.*

In his show cause proceedings, the appellant did not furnish any reason for his failure to attend court. The appellant only informed the court that he could not recall why he had failed to attend court on the two dates. As a result, the trial judge imposed a show cause penalty of $200 for each occasion that he had failed to attend court and a sentence in default of two days. The trial judge stated in his judgment that, in deciding the show cause penalty to impose, he took into account the appellant`s financial hardship and his wife`s medical problems. The trial judge also mentioned that he took note of the fact that the appellant is an elderly person.

The appellant paid the total penalty of $400 on 6 June 2001, ie on the same day the order was made.

The appeal

The appellant who was not represented by counsel, stated in his notice of appeal that he was appealing `against his show cause penalty imposed by the district judge` on 6 June 2001. However, when the appellant appeared before me, he did not challenge his conviction or sentence. Instead, he made a most unusual request in asking me to refund him the $400 penalty he had already paid and to allow him to serve the default sentence of two days` imprisonment instead. This was a request which I am not empowered under any written law to grant.

Appellate jurisdiction of the High Court

The appellate jurisdiction of the High Court is set out in s 19 of the Supreme Court of Judicature Act (Cap 322, 1999 Ed). It states:

> *The appellant criminal jurisdiction of the High Court shall consist of -*
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> *(a) the hearing of appeals from District Courts or Magistrates` Courts before one or more Judges* ***according to the provisions of the law for the time being in force relating to criminal procedure*** *; ... [Emphasis is mine.]*

Section 224 of the Criminal Procedure Code (Cap 68) deals with the power of the court to impose a sentence of default imprisonment. Accordingly, the power of the High Court in hearing the appeal is in turn circumscribed by s 224. For the present purposes, the relevant subsections are s 224(b)(iv), s 224 (e) and s 224(f). It should be noted at the outset that s 224 does not provide the court with the power to refund a fine already paid and to allow the appellant to serve a default sentence instead.

Section 224(b)(iv) states:

> *Where any fine is imposed under the authority of any law for the time being in force then, in the absence of any express provision relating to the fine in such law, the following provisions shall apply:*
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> *(b) in every case of an offence in which the offender is sentenced to pay a fine the court passing the sentence may, at any time* ***before the fine has been paid in full*** *in its discretion, do all or any of the following things:*

> *(iv) direct that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may be sentenced or to which he may be liable under a commutation of a sentence. [Emphasis is mine.]*

It is clear from a plain reading of s 224(b)(iv) that the discretion of the court to impose a term of default imprisonment in lieu of paying his fine is only available ***before*** the fine has been paid in full. Section 224(e) further states that a sentence of imprisonment imposed in default of payment of fine `***shall*** terminate ***whenever*** that fine is paid`. In other words, the sentence of default imprisonment lapses in the scintilla temporis when the fine imposed is paid. This is because a sentence of default imprisonment is meant to prevent the evasion of fines and not to punish those who are genuinely unable to pay: **Low Meng Chay v PP** [1993] 1 SLR 569 . That a sentence of default imprisonment is not meant to punish those who are genuinely unable to pay is evident from s 224(f). This provision essentially relieves an individual of his remaining term of default imprisonment when he is able to pay the proportionate amount of fine outstanding.

Hence, notwithstanding that there is no provision empowering the court to refund a fine already paid and to allow the appellant to serve a default sentence instead, allowing the appellant`s application would also go against the very object of default imprisonment. This is because a person who has already paid the fine in full can no longer be said to be genuinely unable to pay. Furthermore, it is legally impossible to refund the fine and allow the appellant to serve a default sentence once the fine has been paid in full as the sentence of default imprisonment, by virtue of s 224(e), has ceased to be effective.

For the reasons above, I dismissed the appeal.

Outcome:

Appeal dismissed.