Lee Eng Hock v Public Prosecutor
[2002] SGHC 20

Case Number : Cr Rev 1/2002

Decision Date : 01 February 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Liow Wang Wu Joseph (Straits Law Practice LLC) for the petitioner; Janet Wang (Deputy Public Prosecutor) for the respondent

Parties : Lee Eng Hock — Public Prosecutor

Criminal Procedure and Sentencing – Revision of proceedings – Conviction on plea of guilt – Petitioner pleading guilty on counsel's alleged advice – Petitioner pleading guilty to quickly dispose of matter – Principles governing exercise of criminal revision – Whether appropriate case for court's exercise of revisionary power – s 23 Supreme Court of Judicature Act (Cap 322, 1999 Ed)

Criminal Procedure and Sentencing – Plea of guilty – Safeguards – s 180(b) Criminal Procedure Code (Cap 68)

Judgment

GROUNDS OF DECISION

This was a petition for a criminal revision arising from the decision of the district judge Wong Pui Kay ("the judge"). The petitioner pleaded guilty to a charge under s 43(4) of the Road Traffic Act ("RTA") (Cap 276) and to a charge under s 3(1) of the Motor Vehicles (Third Party Risks and Compensation) Act ("MVA") (Cap 189). In respect of the first charge, he was sentenced to three weeks' imprisonment and ordered to be disqualified from driving all classes of vehicles for 18 months. In respect of the second charge, he was fined $700 and ordered to be disqualified from driving all classes of vehicles for 12 months. The disqualification terms were to run concurrently. The petitioner sought a criminal revision.

The charges and offences

2 Only two charges were relevant. The first charge read:

> You… are charged that you, on or about the 1st day of December 2000 at about 9.15 am, at Ubi Road 1, Singapore, did drive motor lorry YH 114S, when you were under disqualification from holding or obtaining a driving licence for all classes of vehicles, to wit, you were disqualified by a Judge of the Subordinate Courts, Singapore, from holding or obtaining a driving licence for all classes of vehicles with effect from 29.5.00 until your cases are concluded in Court under the provisions of Sec 42(a) and also that as of the 1st day of December 2000 at 9.15 am, you had still not concluded the cases for which the Court had so disqualified you under the said provisions of Sec 42(A), and you have thereby committed an offence punishable under section 43(4) of the Road Traffic Act, Chapter 276.

The second charge read:

> You… are charged that you, on or about the 1st day of December 2000, at bout

> 9.15 am, at Ubi Road 1, Singapore, did use motor lorry YH 114S whilst there was not in force in relation to the user of the said vehicle, such policy of insurance in respect of third-party risks as complies with the requirements of the Motor Vehicles (Third-Party Risks & Compensation) Act, Chapter 189 and you have thereby committed an offence under Section 3(1) and punishable under Section 3(2) of the same Act.

As this was a case in which the petitioner claimed not to understand much English and to be bewildered by criminal procedure, it may be an appropriate juncture to question the desirability of the practice of drafting convoluted charges such as these.

3 Section 43(4) of the RTA provides:

> 43. --(4) If any person who is disqualified as mentioned in subsection (3) drives on a road a motor vehicle or, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, a motor vehicle of that class or description, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.

Section 3(1) of the MVA provides:

> 3. --(1) Subject to the provisions of this Act, it shall not be lawful for any person to use or to cause or permit any other person to use:
>
> (a) a motor vehicle in Singapore…
>
> unless there is in force in relation to the use of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Act.

The facts as shown by the Statement of Facts

4 The petitioner admitted without qualification to the Statement of Facts ("SOF"). He had previously been convicted of an offence under s 42A of the RTA, and disqualified from driving all classes of vehicles from 27 May 2000 to 6 April 2001. On 1 December 2000, the petitioner went to Richard Trans-Service to rent a lorry for the period of 1 to 30 December 2000. Mr Chiam Toh Woo ("PW1"), an employee of the rental company, checked his identity card and driving licence. The rental agreement was concluded and the petitioner drove the lorry away. As he did not possess a valid driving licence, he did not have insurance coverage in respect of third party risks either.

The petitioner's case

5 The petitioner's case rested on two key points. Firstly, he understood the advice of his former lawyer, Suppiah Thangaveloo ("Mr Thangaveloo") to mean that, if he pleaded guilty, he would not receive a custodial sentence. Secondly, he had pleaded guilty even though he was convinced of his own innocence because he wanted the matter quickly disposed of. He had hoped that this would be the case if he was merely fined.

Whether the court should exercise its revisionary jurisdiction in the present case

Principles governing the exercise of the revisionary jurisdiction

6 The High Court's power of criminal revision is provided for in s 23 of the Supreme Court of Judicature Act (Cap 322) and sections 266 to 270 of the Criminal Procedure Code ("CPC") (Cap 68). The principles governing the exercise of this jurisdiction were summarised in *Ma Teresa Bebango Bedico v PP* Criminal Revision 9 of 2001:

> The starting point was that this power is to be exercised sparingly. In *Teo Hee Heng v PP* [2000] 3 SLR 168, the court said:
>
> > It is certainly not the purpose of a criminal revision to become a convenient form of "backdoor appeal" against conviction for accused persons who had pleaded guilty to their charges.
>
> The threshold then is the requirement of "serious injustice", which was laid down in *Ang Poh Chuan v PP* [1996] 1 SLR 326:
>
> > [V]arious phrases may be used to identify the circumstances which would attract the exercise of the revisionary jurisdiction, but they all share the common denominator that *there must be some serious injustice*… there cannot be a precise definition of what would constitute such serious injustice for that would… unduly circumscribe what must be a wide discretion vested in the court… But generally it must be shown that *there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below*. (*emphasis added*)
>
> In *Glenn Knight Jeyasingam v PP* [1999] 3 SLR 362, the court clarified the relationship between CPC s 266(1) and the requirement of "serious injustice". Not only must there have been some error, illegality, impropriety or irregularity, it must also have caused serious injustice:
>
> > The court's immediate duty is to satisfy itself as to the correctness, legality or propriety of any order passed and as to the regularity of any proceedings of that subordinate court. However, this is not sufficient to require the intervention of the courts on revision. *The irregularity or otherwise from the record of proceedings must have resulted in grave and serious injustice*… (*emphasis added*)
>
> … The court [in *Mok Swee Kok v PP* [1994] 3 SLR 140] held that the High Court should exercise its revisionary powers "only where it is *manifestly plain* that the offence charged is nowhere disclosed in the statement of facts tendered (emphasis added)".

The plea of guilt

7 The starting point was s 180(1)(b) of the CPC:

> 180. The following procedure shall be observed by Magistrates' Courts and District Courts in summary trials:
>
> (b) if the accused pleads guilty to a charge whether as originally framed or as amended, the plea shall be recorded and he may be convicted on it:
>
> Provided that before a plea of guilty is recorded the court shall ascertain that the *accused understands the nature and consequences of his plea* and *intends to admit without qualification the offence* alleged against him… (*emphasis added*)

The contents of s 180(1)(b) are included in the safeguards set out by the court in *Ganesun s/o Kannan v Public Prosecutor* [1996] 3 SLR 560:

> In *Lee Weng Tuck v PP*, the Supreme Court of Kuala Lumpur ruled that a plea of guilty must be valid and unequivocal, and in order to determine the validity of a plea of guilty, the following safeguards should be observed. First, the court must ensure that it is the accused himself who wishes to plead guilty. Thus in *R v Tan Thian Chai* [1932] MLJ 74, Whitley J held that an accused person should plead guilty or claim to be tried by his own mouth and not through his counsel.
>
> Second, the court must ascertain whether the accused understands the nature and consequences of his plea. Third, the court must establish that the accused intends to admit without qualification the offence alleged against him. The court also held that it was insufficient that the plea of guilty under the first safeguard was unequivocal if the other safeguards were not complied with.

The petitioner's plea of guilt

8 The first factor in *Ganesun* was whether the petitioner himself wanted to plead guilty. There were two issues here. The first was evidential and rather murky. There was a large measure of uncertainty as to what transpired between the petitioner and Mr Thangaveloo, as can be seen from the correspondence between Mr Thangaveloo and the petitioner's current solicitors set out in the exhibit to the petitioner's affidavit. Mr Thangaveloo had strenuously denied telling the petitioner that a plea of guilt would not occasion a custodial sentence. The petitioner did not any steps to prove his account of the story. In fact, he stated in his affidavit that "[h]aving regard to Mr Thanga's reply to my present solicitors' letter… I now believe that I had misunderstood Mr Thanga's advice".

9 *Chua Qwee Teck v PP* [1991] SLR 857 was not cited by counsel, but it involved facts very similar to the present case and was very much on point. The court gave two reasons for deeming that the accused was under no pressure to plead guilty. Firstly, his conviction as to his own innocence:

> Since he had maintained his innocence all along, and this is confirmed by his own counsel, *he could have rejected his counsel`s advice and fought on in the hope of obtaining an acquittal*. He could have discharged his counsel for lacking

> confidence in putting up a successful defence. (*emphasis added*)

Secondly, the accused's own desire to have the matter quickly disposed of:

> In my view, the petitioner has confused an inducement with a threat or pressure… *the plea of guilty was self-induced*. This is confirmed by his own testimony as follows: "I was thinking that to avoid the trouble of coming to court so many times that if I pleaded guilty I could go back to my job ... I thought by paying a fine, the matter would rest there and so I agreed to plead guilty." (*emphasis added*)

These two factors also existed in the present case, and the conclusion to be drawn was that the petitioner himself had wanted to plead guilty.

10 The second issue related to policy. According to the head note to *R v Peace* [1976] Crim LR 119:

> It would be a serious matter if it were accepted that when counsel gave strong advice indicating the prospect of being found guilty and the alternative of pleading guilty it could be said that the plea was forced on the defendant. It was a question of fact in every case.

If the conduct of defence counsel could be so easily challenged, the chilling effect on the criminal bar would be immense. While there may in some cases be a thin line between dispensing credible legal advice and pressurising one's client to plead guilty, it is undesirable to allow defence counsel to be made convenient scapegoats, on the backs of whom "backdoor appeals" are carried through. There is an exception where "the advice is conveyed as the advice of someone who has seen the judge, and has given the impression that he is repeating the judge's views in the matter" : *R v Turner* [1970] 2 QB 321, but that was not relevant here.

11 The second factor in *Ganesun* was whether the petitioner understood the nature and consequences of his plea. The petitioner admitted in his skeletal arguments that he had been informed by the court (through the interpreter) of the nature and possible consequences of his plea. With respect, this was not, as the petitioner's counsel suggested, a "neutral point". It satisfied the second requirement in *Ganesun*.

12 The third factor in *Ganesun* was whether the petitioner had intended to admit to the offence, without qualification. If it was accepted that the petitioner himself wanted to plead guilty and that he understood the nature and consequences of his plea, then the third factor would automatically be satisfied in this case. This was because all the elements of the offences were made out in the SOF, and the petitioner had admitted to it without qualification.

Conclusion

13 There was no reason for the court to exercise its revisionary power. The petitioner did not show that there was any irregularity relating to his plea of guilt which caused serious injustice. Accordingly the petition was dismissed.

Petition dismissed

Sgd:

YONG PUNG HOW
CHIEF JUSTICE