

Hassan bin Ahmad v Public Prosecutor
[2000] SGHC 142

Case Number : MA 13/2000

Decision Date : 18 July 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : K Muralidharan Pillai (Allen & Gledhill) for the appellant; Peter Lim Seng Lak and Christopher Ong Siu Jin (Deputy Public Prosecutors) for the respondent

Parties : Hassan bin Ahmad — Public Prosecutor

Criminal Law – Statutory offences – Prevention of Corruption Act (Cap 241, 1993 Rev Ed) – Receipt of moneys by police officer -Whether proof of nexus between receipt of money and particular act necessary – Whether police officer intends to be bought over – Whether receipts tainted by corrupt element – Whether police officer guilty knowledge

: Background to the appeal

At the time of his arrest, the appellant, Hassan bin Ahmad, was an Assistant Superintendent of the Singapore Police Force. On 11 January 2000 he was tried and convicted in the district court by district judge Mavis Chionh of four charges of corruption under s 6(a) of the Prevention of Corruption Act (Cap. 241). The district judge sentenced him to nine months' imprisonment in respect of each conviction, with two sentences to run concurrently for a total of 18 months' imprisonment. The appellant was also ordered to pay a penalty of \$8,000 under s 13 of the Prevention of Corruption Act, which was the amount he was found to have received as gratification, in default of which he was to serve a further two months' imprisonment. I dismissed his appeal against conviction and sentence, and now give my grounds.

Facts found by the district judge

The appellant was convicted on the premise that between November 1997 and January 1999, while a trainee at the Police Academy and subsequently an Assistant Superintendent of the Singapore Police Force, he had received various sums from an individual known as Chua Tiong Tiong ('Chua') and that he had agreed, in exchange for the receipt of those sums, to use his official position to perform favours for Chua from time to time. In other words, the district judge found that the appellant had been 'bought over' by Chua.

In the court below, the prosecution sought to buttress its case with the allegation that Chua Tiong Tiong was in fact a notorious illegal moneylender and underworld figure, 'Ah Long San'. In his statement to the Corrupt Practices Investigation Bureau (CPIB) on 26 January 1999 (exh P5), the appellant stated at para 21 that he knew Chua only as 'Ah San' but that his suspicion had been aroused as to Chua's true identity when Chua's employees and friends had 'mentioned about (sic) who he really was'. The appellant further stated that 'somehow due to his kindness, I casted (sic) aside my suspicions'. The district judge held that she was unable to make a ruling because the evidence adduced by the prosecution in support of its allegation was inadmissible hearsay. She also held, however, that it was not necessary to make a finding as to Chua's identity as she was 'satisfied that the prosecution had proved beyond reasonable doubt the corrupt nature of the gratifications received by the accused' (at [para] 135 of her grounds of decision). She arrived at this conclusion by relying on the following facts.

The appellant gave evidence at trial that he first met the individual known as Chua Tiong Tiong in 1993. In time, Chua enlisted the appellant's assistance in two of his businesses, a construction materials company and a karaoke lounge. There was no formal agreement about payment. Instead, Chua gave the appellant between \$200 and \$300 every few weeks.

At this time, the appellant was enrolled in a course for an external law degree. In September 1994, Chua asked the appellant how much his tuition fees were. The appellant told Chua the tuition fees would cost between four and five thousand dollars. Soon after, Chua gave the appellant about \$4,000 for tuition fees for the second year of his course.

Then, in August 1995, the appellant learnt that he had failed his second year examinations and decided to complete his degree studies overseas. He decided to go to England to look at three universities to see whether he could continue his law studies at one of them. He approached Chua for assistance, asking for an advance of \$20,000. Chua agreed, giving him two instalments of \$10,000 each. The appellant thereafter enrolled at Buckingham University. He continued to receive money from Chua in the course of his studies. He gave evidence that, between June and December 1996, Chua gave him a total of about \$1,000. Then, in March or April 1997, he discovered that his resources had been exhausted. In desperation, he again approached Chua for help. Chua agreed to send about \$3,500 by telegraphic transfer to him in England. He finally obtained his law degree in 1997, at a total cost of about \$100,000. He testified to having obtained additional moneys from other sources in order to supplement the moneys given to him by Chua.

Upon returning to Singapore, the appellant considered his options and decided he would join the police force, having performed his National Service with the police. He commenced training at the Police Academy in October 1997. While a trainee at the Police Academy, he received from Chua \$1,000 in November 1997, \$1,000 in February 1998 and \$5,000 in April 1998. After he graduated from the Academy in August 1998, he was posted to the Jurong Police Station, where, in January 1999, he received a further sum of \$1,000 from Chua through one of Chua's agents, Lim Hock Ghee. It was these four receipts in November 1997, February 1998, April 1998 and January 1999, totalling \$8,000 in all, that formed the basis for the four charges preferred against him in the district court.

Counsel for the appellant clarified in the course of the appeal that the appellant did not dispute the receipt of these sums, only the dates and the character of the receipts. The appellant contended that, because the sums were all in the nature of friendly, interest-free loans, he had never agreed to reciprocate Chua's generosity by performing favours for him. The district judge rejected this contention, finding that 'the evidence failed to show any meaningful repayment'. For example, the appellant claimed that he repaid \$3,000 to Chua between February and April 1998, suggesting therefore that the sums received were not gifts. Curiously, the appellant then proceeded to 'borrow' \$5,000 from Chua in April 1998. In cross-examination, the appellant explained these loans and repayments as 'how you operate in the commercial world. You sign a credit card, you pay the minimum and you can still sign again.' The district judge relied on this statement to reject the appellant's allegation that his arrangements with Chua were friendly and not commercial in nature.

Having determined that the sums received by the appellant were 'substantial' and having rejected the contention that the payments were mere loans, the district judge also heard and accepted the evidence adduced by the prosecution to show that the appellant had, on two discrete occasions, upon Chua's request, made use of his official position in the police force to obtain information for Chua.

On 15 June 1998, Chua contacted the appellant to inform him that Chua's brother had been detained by the Secret Societies Branch of the Criminal Investigation Division (SSB) under suspicion of

involvement in illegal money-lending activities. The next day, the appellant contacted PW3 Tay Chwee Teck to ask him out for drinks. Tay was a police officer who had been posted to SSB between 1990 and 1995. The appellant had come to know Tay when he was performing his National Service with the CID in 1993. Tay informed the appellant that he was unavailable to meet him. The appellant, however, persisted. On 17 June 1998, the appellant again contacted Tay. Tay said he was again unsure if he could meet the appellant and asked him to call him again in the evening. The appellant did so and this time arranged to meet him at the Elias Road Beer Garden. Over drinks, the appellant asked Tay whether he knew that 11 persons had been arrested for illegal money-lending activities two days earlier and that one of them was 'Ah Long San's' brother. The appellant also asked Tay if in his opinion the arrested persons were likely to be detained without trial under the Criminal Law (Temporary Provisions) Act. Tay told the appellant that this was a possibility if they were suspected of being secret society members, for example, if they had been operating illegal money-lending schemes or harassing their debtors.

On 6 November 1998, Chua again contacted the appellant, this time to inform him that an individual known as Peter Ng had been arrested by the Jurong Police Division. The appellant was working at the Jurong Police Station at this time. The appellant testified that Chua had told him that Ng's family was concerned that he would be physically abused while in custody. The appellant gave evidence that he reassured Chua that 'these things don't happen'. Subsequently, the accused approached PW5, Lem Woon Wee, who was the Investigating Officer in Ng's case. The appellant was not Lem's direct superior or even in the same department as Lem. The appellant asked Lem in Hokkien to '**dui yi ka hor tam bor**', meaning 'treat him slightly better' (referring to Ng). Subsequently, when Lem went to the lock-up to bring Ng out for questioning, the appellant was waiting there. According to Lem, the appellant brought Ng from the lock-up to the interview room while Lem signed the lock-up diary. In the interview room, Lem asked Ng whether he had any explanation for his arrest. Lem testified that, before answering, Ng looked to the appellant as if to ask him 'whether to speak up or not'. When the appellant nodded, Ng spoke. Lem testified that the appellant spoke to Ng 'like speaking to his friend'. Lem subsequently recommended that no further action be taken against Ng.

The district judge rejected the rebuttal evidence given by the appellant as to both incidents. As regards the first incident, the appellant alleged that it was Tay, not himself, who had brought up the fact that 11 persons had been recently arrested. He also alleged that no reference to Chua or 'Ah Long San' was made in the course of conversation. As regards the second incident, the appellant contended that he had not in fact sought out Lem, but had coincidentally bumped into him in the station, at which point he thought to ask after Ng. He alleged that, by asking Lem to 'Treat him slightly better', he was in fact asking Lem not to physically abuse Ng to obtain his co-operation. He admitted, however, to being present during Ng's interview and to asking Ng questions in the interview room. On the basis of her observance of the witnesses' demeanour, the district judge accepted the evidence of Tay and Lem and rejected the version of the events presented by the appellant.

This trinity of circumstances - the quantum of the sums received, the probability that they were gifts and not loans, and the demonstrated willingness of the appellant to act on Chua's instructions - formed the basis of the district judge's ruling that the appellant intended to be, and in fact was, 'bought over' by Chua.

Findings of the district judge on the charges of corruption

Based on her findings of fact, the district judge held that the essential elements necessary for a conviction under s 6(a) of the Prevention of Corruption Act had been established. Section 6 makes it a punishable offence if

any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

Here, it was proven that the appellant had received four separate payments and that he had performed acts in relation to his principal's affairs, namely by obtaining information for Chua by using his official position as an Assistant Superintendent of Police. On the question whether the payments were received 'corruptly', as an inducement or reward, the district judge applied the two-stage test established in a line of cases decided by the High Court. A gratification is received 'corruptly' if (1) there is an objectively corrupt element in the transactions and, in addition, (2) the accused person knows that what he was doing was, by the ordinary and objective standard, corrupt: **PP v Khoo Yong Hak** [1995] 2 SLR 283, **Chan Wing Seng v PP** [1997] 2 SLR 426, **Yuen Chun Yii v PP** [1997] 3 SLR 57 [1998] 1 SLR 300 and [1998] 2 SLR 878. The first limb of the test is made out by ascertaining the accused person's intention in receiving the alleged gratification, and then determining, on an objective standard, whether that intention, given the facts, taints the transactions with a corrupt element. Under the second limb, the accused's state of mind is determined as a question of fact. The district judge held that both limbs of the test were satisfied.

First, there was an objectively corrupt element in the transactions in that the accused's intention in receiving the moneys was to be 'bought over' by Chua. The district judge held (at para 129 of her grounds of decision) that by agreeing to be 'bought over', the transactions were tainted with an objectively corrupt element:

As a police officer, the accused was held to strict standards of integrity: receipt of moneys from a private individual would suggest that he had compromised his official position, especially when the sums in question were not inconsiderable. To put it another way, the accused had placed himself in a position beholden to Chua, which could lead to possible abuse of his official position; and as was shown by the evidence from Tay Chwee Teck and Lem Woon Wee, he did in fact abuse his position by using it to influence the outcome of police investigations and/or to make inquiries into the status of investigations in which Chua had an interest.

Secondly, the district judge found as a fact that the accused had guilty knowledge that what he was doing was, by the ordinary and objective standard, corrupt. She arrived at this conclusion by relying on the High Court's holding in Chan Wing Seng that there 'can be instances where the accused's actions are so obviously corrupt by the ordinary and objective standard that he must know his conduct is corrupt' (at para 131 of her grounds of decision). Her decision was also supported by her observance of the appellant's demeanour at trial. His evasiveness confirmed in her mind that the appellant was not an innocent actor.

The grounds of appeal

Counsel for the appellant advanced three grounds of appeal. First, he contended that the district judge had drawn the incorrect inference in holding that the appellant intended to be bought over by Chua. Second, it was argued that the receipt of the four sums of money between November 1997 and

January 1999 were not in fact tainted with a corrupt element. Lastly, it was argued that the appellant lacked the requisite guilty knowledge that his actions were corrupt by the ordinary and objective standard.

(i) Whether the appellant intended to be bought over by Chua

Counsel for the appellant first suggested that the district judge had failed to put sufficient emphasis on the fact that there was a marked difference in the time periods between the respective receipts of the moneys and the rendering of the alleged favours. Moneys had been given to the appellant in November 1997, February 1998, April 1998 and January 1999, but the incidents relied on by the prosecution took place in June 1998 and November 1998. It was therefore argued that there was no direct correlation between the receipt and the acts, and that it was accordingly improper to draw the inference that the appellant intended to be bought over by Chua.

Whilst superficially attractive, I rejected this line of reasoning because it failed to account for the theory advanced by the prosecution and accepted by the district judge. The basis of the prosecution's case was that the appellant would periodically receive sums of money from Chua, in exchange for which the appellant would perform favours as and when required. The method of payment was not transactional in the sense that the appellant would be paid a certain sum to do a certain favour. Rather, the arrangement was more akin to a monthly retainer for services from time to time. It was therefore not necessary for the prosecution to prove a nexus between each receipt and a particular act; it only sufficed to demonstrate that the payments were not made innocently, but to purchase the recipient's servitude. This is the essence of being 'bought over' - that the recipient of the gratification be at the beck and call of the payor, prodded into action by his recollection of the payor's generosity even when no specific act was demanded at the time of payment. The district judge had ample grounds on which to accept the prosecution's theory: the appellant could not establish a reasonable explanation for the receipt of the various sums; the appellant received not just one or two but four payments over the course of 14 months, the appellant admitted that Chua had twice called upon him to act and that on both occasions he had in fact acted.

Next, counsel for the appellant suggested that the district judge had erred in failing to take into account the fact that the appellant had a pre-existing relationship with Chua. It was argued that the appellant was motivated by friendship, not the periodic payment of moneys, to assist Chua. I rejected this argument as well. Friendship might have been the motivation if Chua had once or twice assisted the appellant in times of need, long before the appellant was in a position to reciprocate. The facts established in the court below, however, showed the nature of the relationship to have been quite different.

This 'friendship', if one could call it that, was built upon a continuous stream of money flowing from Chua to the appellant. If the initial receipts were in fact loans, then they quickly took on the complexion of gifts when Chua made no effort whatsoever to recover them. In fact, Chua continued to extend generous sums to the appellant despite it being patently obvious that the appellant was not in a position to repay him - at one time the appellant allegedly repaid Chua \$3000 but quickly turned around and borrowed \$5000 shortly thereafter. To suggest that money had nothing to do with the appellant's motivation in assisting Chua would have been naïve.

Furthermore, the appellant continued to accept money after he had been accepted into the Police Force. As the district judge held, entering the Police Force marked the crossing of a threshold for the appellant. At that point he ceased to be an ordinary citizen and became dressed with the duties and responsibilities of office, including the duty to not only conduct himself honestly, impartially and with integrity, but to avoid all appearances that would suggest otherwise. By continuing to take money

from Chua, he opened himself to the suggestion that his position had been compromised. When he agreed to act for Chua, he confirmed his capitulation, for the crux of public corruption is this: to barter services in derogation of a foresworn duty for personal (frequently financial) gain.

Whatever the character of the receipts in the past, the fact that appellant continued to take money from Chua after he was in the steady employment of the police strongly suggested that he intended to maintain the same relationship of indebtedness with Chua while in public office. It might have been arguable that the appellant lacked the intention to be 'bought over' if he had simply received the sums but had performed no favours in return. However, in light of his subsequent actions, soliciting information and making enquiries upon Chua's request, the correct, proper and inexorable inference was that the appellant sold himself, made himself beholden to Chua, readily available to comply with his instructions. I therefore declined to reverse the district judge's finding that the appellant had received the moneys with the intention of being 'bought over'.

(ii) Whether the receipts were tainted with a corrupt element

Counsel for the appellant argued, relying on **PP v Low Tiong Choon** [1998] 2 SLR 878 that the district judge erred in holding that 'receipt of moneys from a private individual would suggest that he had compromised his official position, especially when the sums in question were not inconsiderable,' and that accordingly the receipts were not tainted with a corrupt element.

In **Low Tiong Choon** a police officer (Low) received payment from a former district judge who had entered private practice (Yap) as a reward for introducing a client (Gay) to him. This action amounted to a breach of the Police General Orders, but the High Court held that this did not necessarily result in corruption. The court reasoned as follows (at 890I-891A):

... the deal which Low had struck with Yap was collateral to his official duties as a police officer. Low introduced clients and was paid 'introduction fees'; it would have been a form of 'moonlighting' by taking advantage of his proximity to accused persons. If there was any perception of corruption, it was really because Low was a police officer, and the receipt of money would at once suggest that he had compromised his official position.

However, on examining the evidence, there was nothing to prove that Low had compromised, or intended to compromise if need be, the performance of his official duties or work - he was not showing any favours or disfavours to Gay. It was not as if Low treated Gay any differently just because Gay accepted his recommendation ...

*And, in relation to Yap, although I accepted that Low had placed himself in a position beholden to Yap which could lead to possible abuse of his duties, there was no evidence that Low had committed such abuses or intended to do so when requested. I did not think that s 5 of the PCA was constituted here simply because the receipt of the reward had placed Low in a position which could **potentially** lead to corruption through an abuse of his office - it was imperative that the receipt **in itself**, which was the act complained of in the charge, was actually corrupt.*

Low Tiong Choon can be distinguished on a number of grounds. In the first place, the arrangement between Low and Yap was on a 'per transaction' basis - Yap would pay Low for each client he introduced. In the instant case, Chua paid the appellant sums from time to time even when there was

no favour to be immediately solicited. Secondly, the reciprocal act Low agreed to perform (the introduction of clients) did not impinge on his official duties as a police officer. Neither was there any evidence that he intended to do so. In contrast, here the appellant took advantage of his network of contacts within the police force to solicit information about Chua's brother. He also abused his rank when he interfered in an investigation for which he was not the investigating officer. He was neither Lem's direct superior nor was he asked by Lem to render him assistance. Taking advantage of his higher rank, he directed Lem to go easy on Peter Ng and reinforced the request by taking it upon himself to be present in person at Ng's interview, bringing the weight of his authority and superior rank to bear upon Lem. In so doing, he revealed that he was prepared to use his position to pervert, or at the very least disrupt, the course of justice. I accordingly rejected counsel's submissions that the receipt of the moneys was not tainted with a corrupt element.

(iii) Whether the appellant had guilty knowledge

The district judge held that the appellant's actions were so obviously corrupt by the ordinary and objective standard that he must have had the requisite mens rea for the offence. Counsel for the appellant first contended that the district judge had erred in failing to consider the facts and circumstances surrounding each receipt before arriving on a decision whether the appellant had the requisite guilty knowledge. Counsel also took issue with the two reasons cited by the district judge in support of her conclusion that he in fact had the requisite guilty knowledge: first, the appellant's evasiveness during cross-examination and secondly, his unsatisfactory answer to the question why he told Lem Woon Wee to 'treat [Ng] slightly better'.

I accepted the submission that the district judge had to consider the facts and circumstances surrounding each receipt in order to make out whether each individual charge had been made out. Counsel, however, highlighted nothing distinguishing any given receipt from the others so as to suggest that the appellant lacked guilty knowledge on that particular occasion. On the contrary, each receipt was unremarkable in that it was simply the next instalment in a history of generosity dating back to 1993. It was not necessary for the prosecution to establish that the appellant formed a specific intention in relation to the first receipt, and yet another in relation to the second, because the appellant's intention was persistently the same: to obligate himself to Chua through the frequent receipt of moneys, with each receipt perpetuating the appellant's sense of gratitude and readiness to reciprocate.

On the subjective question whether the appellant in fact knew that what he was doing was corrupt, by the ordinary and objective standard, I saw no reason to disturb the conclusions of the district judge premised on her observance of the appellant's demeanour in court and the inferences she drew from his testimony and CPIB statements. I therefore affirmed the district judge's findings and rejected the appeal against conviction.

Sentencing

It was submitted that the sentences imposed by the district judge were 'cumulatively, crushing and not in keeping with [the appellant's] prospects or records'. Having reviewed the circumstances taken into account by the district judge and in view of decided precedents, I saw no reason to disturb the sentences imposed in the court below.

As a police officer and public servant who had received a direct promotion to the rank of Assistant Superintendent on the basis of his holding a graduate degree in law, the public reposed in the appellant its trust that he would act with honesty and integrity. He abused that trust almost from the

outset, receiving substantial payments from Chua, whom, by his own admission, he suspected was the underworld figure known as `Ah Long San`. When he was asked to reciprocate, he could not find the courage to resist. I find no attraction in the plea that the appellant`s future is compromised by his conviction. Taking into account the possibility of remission, the total sentence of 18 months imprisonment was generous. I accordingly rejected the appeal against sentence.

Outcome:

Appeal dismissed.

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