

Mehra Radhika v Public Prosecutor
[2014] SGHC 214

Case Number : Magistrate's Appeal No 102 of 2014
Decision Date : 28 October 2014
Tribunal/Court : High Court
Coram : Sundaresh Menon CJ
Counsel Name(s) : S K Kumar (S K Kumar Law Practice LLP) for the appellant; Mavis Chionh, Chee Min Ping and Joshua Lai (Attorney-General's Chambers) for the respondent.
Parties : Mehra Radhika — Public Prosecutor

Immigration – criminal offences

28 October 2014

Sundaresh Menon CJ:

Introduction

1 Under our immigration law, specifically s 57C(1) of the Immigration Act ("Cap 133, 2008 Rev Ed) ("the Act"), it is an offence for a person to enter into a marriage knowing or having reason to believe that the purpose of the marriage is to assist one of the parties to the marriage to obtain an immigration advantage, and where any sort of gratification is involved. This offence is colloquially known as "transacting a marriage of convenience". The appeal before me concerned the arrangement, or assisting in the arrangement, of a marriage of convenience, a separate offence under s 57C(2) of the Act. Under the latter offence, there is no requirement to show that any consideration or gratification is involved.

2 The charge levelled against the Appellant, Mehra Radhika, a 22-year old female Indian national, was that she had committed an offence under s 57C(2) of the Act by arranging a marriage of convenience between one Norhayati, a female Singapore national, and one Gagandeep, a male Indian national, with the intention of assisting Gagandeep to obtain an immigration advantage so as to extend his stay in Singapore.

3 Although the Appellant initially claimed trial, she (later) admitted to the Statement of Facts without qualification and pleaded guilty to the charge on the first day of trial. She was convicted and sentenced by the learned District Judge ("DJ") to eight months' imprisonment in addition to the month or so that she had spent in remand prior to her being bailed out. The Appellant appealed against the sentence on two grounds, the first being that the sentence was manifestly excessive and the second being that the sentence was arrived at by the DJ without a proper appreciation of the facts.

4 I allowed the appeal and reduced the sentence of imprisonment to six months. These are my full grounds of decision to supplement the brief reasons I gave when I disposed of the appeal after hearing the arguments.

Facts

Background

5 The relevant facts are set out in the Statement of Facts. The seed of the marriage of convenience was sowed in the middle of 2012, when the Appellant was first contacted by her brother in India and was asked for help in finding a job for Gagandeep. In response, the Appellant suggested that Gagandeep enter into a marriage of convenience with a female Singapore national as she thought that that would make it easier for him to secure a work permit. His "wife" would also be able to sponsor the extension of his stay in Singapore.

6 The Appellant then sought the assistance of her friend, one Peer Ali, in February 2013. The Appellant discussed the following proposed terms of the marriage of convenience with Peer Ali: (a) the "wife" would be paid a sum of money for her involvement; (b) the "wife" would not need to fulfil any marital obligations; and (c) the "wife" would have to sponsor Gagandeep's application for a Visit Pass to extend his stay in Singapore.

7 Peer Ali (evidently, through his brother) found Norhayati quite quickly. Gagandeep arrived in Singapore shortly thereafter on 26 February 2013 and just days later, on 2 March 2013, was brought by the Appellant to the Toa Payoh South Community Club where his marriage to Norhayati was solemnised. After the solemnisation, the Appellant paid Peer Ali a sum of \$6,300 for his assistance. From the Statement of Facts, it was not clear how much of this was paid to Norhayati or if any of it was paid by Peer Ali to his brother.

8 The Appellant, along with Norhayati, Gagandeep and Peer Ali were all subsequently arrested and charged. Norhayati and Gagandeep were charged under s 57C(1) of the Act for entering into a marriage of convenience. Peer Ali was charged under s 57C(2) (as was the Appellant) for arranging a marriage of convenience. Norhayati and Gagandeep were sentenced to six months' imprisonment each while Peer Ali was sentenced to nine months' imprisonment.

9 For ease of reference, I set out the entirety of s 57C:

57C.—(1) Any person who contracts or otherwise enters into a marriage —

(a) knowing or having reason to believe that the purpose of the marriage is to assist one of the parties to the marriage to obtain an immigration advantage; and

(b) where any gratification, whether from a party to the marriage or another person, is offered, given or received as an inducement or reward to any party to the marriage for entering into the marriage,

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 10 years or to both.

(2) Any person who arranges or otherwise assists in arranging a marriage between 2 other persons, with the intention of assisting one of the parties to the marriage to obtain an immigration advantage, 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 10 years or to both.

(3) This section shall apply to a marriage entered into whether in Singapore or outside Singapore.

(4) In any proceedings for an offence under subsection (1) or (2), it shall be a defence for the person charged with the offence to prove that, although one purpose of the marriage was to assist a party to the marriage to obtain an immigration advantage, the defendant believed on

reasonable grounds that the marriage would result in a genuine marital relationship.

(5) For the purposes of subsection (4), what constitutes a genuine marital relationship is a question of fact and the court shall have regard to all the circumstances of the case in determining the question.

(6) In this section —

“gratification” includes —

- (a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; and
- (d) any other service, favour or advantage of any description whatsoever;

“immigration advantage”, in relation to a party to a marriage, means the grant or extension of the validity of any visa, pass, permit or re-entry permit under this Act or the regulations or any order made thereunder for that party or for a child or parent of that party.

The DJ’s decision

10 The DJ imposed what, in effect, was a nine-month term of imprisonment on the Appellant. His reasons for doing so are contained in his judgment which is reported as *Public Prosecutor v Mehra Radhika* [2014] SGDC 206 (the “Judgment”). These may be summarised as follows:

- (a) Section 57C of the Act was enacted in December 2012 because Parliament recognised that targeted legislation aimed at marriages of convenience was needed in order to safeguard the security and integrity of our borders and to maintain law and order.
- (b) As other courts have noted, marriages of convenience create serious social and economic problems, undermine the integrity of the immigration system, and erode the sanctity of marriage. If left unchecked, human trafficking and transnational organised crime may be facilitated under the cloak of a marriage of convenience.
- (c) The list of precedents tendered by the Prosecution showed that similar offences attracted between eight and 11 months’ imprisonment terms.
- (d) The Appellant had initiated and facilitated the offence; in that sense, her role was crucial. The Appellant was therefore more culpable.
- (e) Peer Ali, the Appellant’s accomplice, had been sentenced to nine months’ imprisonment.
- (f) The Appellant had no antecedents.

My decision

11 While I could understand the approach that had been taken by the DJ, I considered that

appellate intervention was warranted in this case because, having regard to all the relevant factors, it was evident that the Appellant's sentence was manifestly excessive.

The relevant sentencing considerations

12 The DJ essentially took into account five factors:

- (a) first, Parliament's intentions behind and its reasons for enacting a provision targeted at marriages of convenience;
- (b) second, the sentencing benchmark based on sentences previously imposed for similar offences;
- (c) third, the significance of the Appellant's role in the commission of the offence;
- (d) fourth, the Appellant's antecedents; and finally,
- (e) the sentences imposed on the others involved in this matter.

13 These factors are undoubtedly relevant. But, in my judgment, they do not provide a complete basis upon which the sentencing decision in this case should be arrived at.

14 Some other considerations that ought to be factored into the sentencing framework for this offence were usefully highlighted by the English Court of Appeal in *Regina v Milusca Theresita Oliveira, Kingsley Jozue Oramulu* [2012] EWCA Crim 2279 ("*Oramulu*"). I am grateful to Ms Mavis Chionh, the learned Deputy Public Prosecutor, who referred me to this authority.

15 *Oramulu* was a consolidated appeal brought against two separate decisions that were related in that both concerned the English equivalent of a marriage of convenience.

16 In the first case, Oliveira, a female Dutch national, and Oramulu, a male Nigerian national, had carried out an elaborate plan which culminated in a ceremony of marriage in 2007 that provided Oramulu with a lawful basis for residing in the United Kingdom. Over the next three or four years, Oramulu sent payments totalling about £3,600 to Oliveira. In 2011, the police discovered that Oramulu was living alone. While the police found no sign that Oliveira was living with Oramulu, they did find a bag containing, amongst other things, a photocopy of Oliveira's Dutch identity card, the couple's marriage certificate, Oliveira's driving licence and some wedding photographs. These were documents that could be used to substantiate the marriage, at least superficially, if the need arose.

17 The second case before the court in *Oramulu* involved a male Czech national, Cina. Over a period of 15 months, Cina recruited five different Czech women and made arrangements for them to enter into marriages of convenience with Nigerian men who wished to evade immigration controls and acquire rights of movement, residence and employment associated with marriage to a European Union ("EU") national. Cina's fees for his services ranged from £4,000 to £5,000 for each case. The women were promised something in the order of £2,000, although in at least two cases, Cina cheated the women, underpaying them by £1,500 and £1,100. There was also evidence that whenever the Czech women had second thoughts, Cina would prevail upon them to carry out the plan to fruition. In one instance, there was reasonably clear evidence of undue pressure bordering on a threat being exerted on one of the women who was told, amongst other things, that if she did not comply, she might expect trouble from some Nigerians who might visit her at home.

18 Cina, Oramulu and Oliveira were all charged with and convicted of an offence under s 25 of the Immigration Act 1971 (c 77) which provides that a person commits an offence if he:

- (a) does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the EU,
- (b) knows or has reasonable cause for believing that the act facilitates the commission of a breach of immigration law by the individual, and
- (c) knows or has reasonable cause for believing that the individual is not a citizen of the EU.

19 Oramulu and Oliveira were both sentenced to three and a half years' imprisonment. Although Cina pleaded guilty – unlike Oramulu and Oliveira – he was sentenced to a longer imprisonment term of five years. The question before the English Court of Appeal was whether there was any merit in their respective appeals against sentence.

20 Cina's appeal was dismissed. Although the court noted that his sentence was "significantly long", it was nonetheless considered appropriate given, in particular, the fact that he had actively recruited the women to participate in his criminal enterprise; and had not only exerted pressure on them but had also exploited them. Consideration was also given to the fact that he ran a sophisticated operation and carried out multiple transactions; and the entirety of his enterprise was driven by the pursuit of profit.

21 Oramulu and Oliveira, on the other hand, had their imprisonment sentence reduced to thirty months. The court noted that theirs was a single transaction which was not part of a commercial operation; and although the marriage was not motivated by family loyalty, friendship or other non-commercial motives, and had been done for money alone, there was no element of exploitation by either party. Oramulu and Oliveira's offence thus fell within the normal sentencing range for such offences which was 18 months' to three years' imprisonment.

22 It should also be noted that the court was alive to the evolution of the legislation proscribing such marriages of convenience. The statutory maximum for the offence had been increased *twice* in the preceding years – from seven to ten years' imprisonment in 1999, and then to 14 years' imprisonment in 2003. There was no question, according to the court, of the "significance which Parliament attaches to these offences" and sentencing must respond to this Parliamentary signal.

Applicable sentencing framework for such offences

23 In my judgment, the factors considered by the DJ, together with the considerations that figured in *Oramulu*, reflect an appropriate sentencing framework that ought to apply to an offence under s 57C(2) of the Act. In summary and broadly speaking, the factors which are relevant for the purpose of sentencing are:

- (a) the circumstances of the offence; and
- (b) the particular role and the motivation of the offender.

24 In my judgment, the relevant factors to be considered in relation to the circumstances of the commission of the offence are:

- (a) whether the offence was committed in circumstances that reveal that active steps were

taken in an attempt to avoid detection of the offence; and

(b) whether the offence was a one-off incident or part of a wider illicit commercial operation.

25 Relevant factors to be considered in relation to the role and motivation of the offender are

(a) the specific role played by offender;

(b) the specific motive with which the offender committed the offence;

(c) whether the offender had recruited accomplices to assist in the commission of the offence; and

(d) whether the offender had pressured or exploited any of the other parties involved in the marriage of convenience.

26 Some of these factors are of general application while others are specific to the offence at hand. Aside from these, it will of course be relevant to have regard to matters such as the offender's antecedents as well as any other aggravating or mitigating factors.

Legislative intention behind s 57C of the Act

(1) General principle

27 Legislative intention is relevant to and influences sentencing in various ways. As a generally operative background factor, if Parliament has increased the punishment for an offence on the basis that the mischief in question was becoming more serious and needed to be arrested, as was the case in *Oramulu*, the courts would not be acting in concert with the legislative intent if they fail to have regard to this in developing the appropriate sentencing framework or if they nonetheless err on the side of leniency in sentencing.

28 Legislative intention is also relevant in the assessment of the appropriateness of a sentence for an offence that has a statutorily prescribed range of sentences. In *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653, V K Rajah J (as he then was), when meting out a sentence that was close to the statutory maximum, observed thus (at [87]):

If a particular criminal provision prescribes a maximum sentence that seems unduly light or lenient in relation to the potential seriousness of offences that fall under it, meting out a near-maximum sentence is not warranted unless it is demonstrated by the prosecution that that particular offence figures among the worst type of cases *falling within that prohibition*. ***Thus, there must be a sense that the sentence is proportionate not only to the culpability of the offender but also in the context of the legislative scheme***. [emphasis in original in italics; emphasis added in bold italics]

29 The principle is that the court should consider the range of conduct that may be captured at either end of the sentencing range before considering where in that spectrum falls the particular conduct that is at issue in the case before it. In short, the culpability of the offender cannot be assessed in a vacuum.

(2) Relevance of legislative intention to the present case

30 As the DJ noted in his Judgment, s 57C of the Act was enacted to specifically target marriages

of convenience. Section 57C took effect on 19 December 2012 pursuant to the Immigration (Amendment) Bill that was passed on 13 August 2012. There was little elaboration on the overall object of enacting a specific provision targeting marriages of convenience. All that the Second Minister for Home Affairs, Mr S Iswaran, explained when introducing the Bill during the Second Reading was that the new law carried with it “stiff penalties [which] will serve as a strong deterrent” (*Singapore Parliamentary Debates, Official Report* (13 August 2012) vol 89 (“*Hansard*”) at p 2). Reference was also made to the existence of similar legislation in the United States and Australia.

31 In expressly acknowledging that there was “no specific law against marriages of convenience” at that time (*Hansard* at p 2), and by enacting such a law, the Second Reading speech suggests that the position at law prior to the enactment of s 57C of the Act was deficient and needed to be addressed in order to keep up with the changing immigration landscape.

32 Prior to the enactment of s 57C, transacting a marriage of convenience was not an offence *per se*, but acts associated with a marriage of convenience were frequently prosecuted under one of two pieces of legislation: s 5(b)(i) of the Prevention of Corruption Act (Cap 241, Rev Ed 1993) or s 57(1)(k) of the Act. These two provisions were generic provisions, in that they respectively targeted all types of corrupt acts and all false declarations made for the purpose of obtaining an immigration advantage. Punishment for corruption is a fine of up to \$100,000 or imprisonment of up to five years or both. Punishment for a false declaration is a fine of up to \$4,000 or imprisonment of up to 12 months or both.

33 There are a number of significant differences between the old position and the current position under s 57C of the Act. The current position, which is specifically targeted at marriages of convenience, draws a distinction between an offence committed by the parties to the marriage of convenience and an offence by a person who assisted in the arrangement of such a marriage. After the enactment of s 57C, as I have already noted, parties to the marriage of convenience are convicted of an offence under s 57C(1) while persons who assisted with the arrangement of the marriage of convenience are convicted of an offence under s 57C(2).

34 The punishment regimes are also different. Under both ss 57C(1) and (2) of the Act, which carry the same punishment, an offender is liable to a fine of up to \$10,000 or imprisonment of up to 10 years or both. When compared to the generic offence of false declaration under s 57(1)(k), the punishment for entering into or otherwise arranging a marriage of convenience was significantly increased in severity. In particular, the maximum imprisonment sentence was increased ten-fold. When compared to the punishment for corruption, the maximum fine is lower but the imprisonment term was doubled. On the whole, there can be no doubt that the punishment regime applicable to these targeted offences is considerably more severe than was the case when offenders were charged with the generic offences of making a false declaration or of corruption. This is unsurprising and coheres with the stated legislative objective of creating a strong deterrent against transacting marriages of convenience.

35 Thus, it can safely be concluded that Parliament had intended, through the enactment of s 57C of the Act and the enhanced punishment that was provided for under that section, to signal that marriages of convenience had become a sufficiently pressing issue that needed direct attention and deterrence through a targeted regime.

Circumstances of the commission of the offence

36 In the analysis that follows, I address only the offence of assisting in the arrangement of a marriage of convenience, that is, an offence under s 57C(2) of the Act.

(1) Attempting to prevent detection of the offence

37 An offence committed in circumstances which were designed to prevent detection is a well-established aggravating factor. It has particular significance in the context of s 57C(2) of the Act because of the deliberate legislative intention behind enacting a targeted provision in the Act to deal with marriages of convenience.

38 If the arranger has taken active steps to prevent the detection of the offence or has put in place measures designed to deceive an inquisitive third party into thinking that the marriage is legitimate, that could be an aggravating factor that warrants a more severe sentence.

39 This is a function of the amount of planning that has gone into the commission of the offence (see *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [42]). However, it is important to recognise that evidence of planning, on its own, does not always justify a harsher sentence.

40 Rather, planning is typically considered an aggravating factor when it points to the existence of a *considered* intention to perpetrate the offence which in turn justifies a harsher sentence. Intention, in the context of sentencing, is important. At one end of the spectrum are offences which have been planned with deliberation; on the other end are those which are the result of a "spur of the moment" decision (see Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 5th Ed, 2010) ("*Sentencing and Criminal Justice*") at p 148).

41 The law generally imposes a more severe punishment on an offender who has planned the commission of the offence with great deliberation than one who has committed the offence on a spur of the moment because the former is deemed to possess a greater commitment to the criminal enterprise than the latter. As Professor Andrew Ashworth explains in *Sentencing and Criminal Justice* at p 164:

A person who plans a crime is generally more culpable, because the offence is premeditated and the offender is therefore more fully confirmed in his criminal motivation than someone who acts on impulse, since he is more considered in his lawbreaking...

42 However, it bears noting that premeditation and planning are actually two distinct concepts even though they overlap; a premeditated offence need not have very much planning but a planned offence is usually premeditated.

43 This distinction is an important one because it brings out the point that in some instances, evidence of planning, though indicative of premeditation, might not in itself justify a harsher sentence. To take the example at hand, it is inherent in the offence of arranging a marriage of convenience that there will have been some degree of premeditation. It will generally not be an offence that happens on the spur of the moment. The arranger must have formed an earlier intention to arrange the marriage of convenience. But where active steps have been taken to attempt to conceal the detection of the marriage or a notable degree of planning has gone into the offence, it suggests that the criminal intent is more directed and the commitment to the offence greater and this is what calls for a harsher sentence.

(2) Single incident or an illicit commercial operation

44 There is a fundamental difference between an offence that is committed as a one-off incident and one that is part of a wider illicit commercial operation.

45 It is self-evidently the case, at least as a general proposition, that a one-off incident of arranging a marriage of convenience is likely to cause less harm than one effected as part of a commercial operation. By its very nature, a commercial operation is designed to bring about continuity of “business”, in this context, the arranging of marriages of convenience. At the very least, in contrast with an offender who only commits the offence as a one-off incident, the reach or at least the potential reach of a commercial operation is far greater, and consequently, far more deleterious. It is this consequence that needs to be especially punished and deterred and which therefore justifies a harsher sentence.

Role and motivation of the arranger

46 The factors relating to the role and motivation of an arranger are relevant to his culpability. The importance of each individual factor, and the interplay between factors, will vary from case to case. Notwithstanding the potential variation, there are some general principles that ought to apply in every case.

(1) The specific role played by the offender

47 It is self-evident that the particular role played by the offender will be relevant to his culpability. At one end of the spectrum, the offender may be the mastermind or moving force of a major illicit commercial enterprise. At the other end, the offender may have been acting under extreme pressure or have played a purely ancillary role.

48 This will be a fact-specific inquiry but as a general principle, the more important and intensive the role of the arranger is, and the greater the scale of the enterprise is, the more severe the punishment should be.

(2) The offender’s profit motivation

49 It is not a requirement of the offence that the arranger must profit from arranging the marriage of convenience. The key element is simply that there must be assistance in arranging a marriage of convenience, knowing that the marriage is to enable one of the parties to the marriage to obtain an immigration advantage. This is unlike the position in relation to the offence of entering into a marriage of convenience under s 57C(1) of the Act, where financial gratification is a necessary element of the offence.

50 Offenders may commit such offences driven by various considerations including, for instance, a misguided desire to assist a friend or relative as was noted in *Oramulu* (at [22]). Although the absence of a dishonourable motivation is not a mitigating factor, its presence would be an aggravating factor. Indeed, the lack of a profit motive would tend to militate against the likelihood of the offence being repeated.

51 For this reason, there is enhanced culpability where the arranger is motivated by any form of financial gain or benefit, and this should be accompanied with a harsher sentence. As a general proposition, the greater the reward received, the greater the punishment ought to be.

52 In addition, where there is an element of financial reward, a fine should be imposed in addition to any term of imprisonment. In *Poh Boon Kiat v Public Prosecutor* [2014] SGHC 186, in relation to vice offences, I observed (at [102]) that fines should be imposed in such cases to annul or negate any financial advantage that might have been obtained through the commission of the offence.

(3) Recruiting other accomplices

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53 There are a number of ways in which accomplices may be recruited by an arranger. For instance, a "spouse" may be recruited to transact the marriage of convenience, which was what happened in the second of the two cases in *Oramulu*, where Cina had recruited the Czech women to be the spouses in the marriage of convenience. In this situation, the arranger's recruitment of the "spouse" should not be an aggravating factor because the procurement of a "spouse" is a key element of brokering a marriage of convenience.

54 However, any other form of recruitment beyond recruiting the "spouse" could well be an aggravating factor. Thus, it would be an aggravating factor if the arranger recruits others to procure the "spouse" or to provide assistance on other operational aspects of the criminal endeavour.

55 In general, an arranger who has recruited more people to participate in the criminal enterprise should be given a harsher sentence than one who has not done so or who has extended the involvement of others to a lesser degree.

(4) Exploitation

56 Exploitation and the application of pressure are, without doubt, aggravating factors. Indeed, as a general point, I would regard these as seriously aggravating factors that would warrant a significantly longer term of imprisonment

57 The manifest disregard of the rights and interests of others for the sole purpose of benefiting oneself is an aggravating factor because it accentuates and builds on the primary criminal conduct, in this case, the arranging the marriage of convenience. In such circumstances, there will almost always be a monetary inducement that drives the commission of the offence. The additional harm inflicted by the arranger on others to increase his own gain warrants a stiffer sentence.

Crossing the custodial threshold

58 There is a wide range of permissible punishments for this offence beginning with a fine and extending to a term of imprisonment of up to 10 years. The custodial threshold will generally be crossed where any of the factors listed above are present, namely:

- (a) if active steps were taken to conceal the offence;
- (b) if the offender played a major role in the commission of the offence as opposed to a minor or merely ancillary role;
- (c) if the offence was committed as part of a commercial enterprise that was active in the commission of such crimes as opposed to being a one-off incident;
- (d) if the offender was motivated by profit, in which case a fine should additionally be imposed;
- (e) if the offender has recruited others (beside the "spouse") in the course of committing the offence; and
- (f) if there has been any exploitation or pressure applied to any of the participants involved in the commission of the offence.

59 Each of these factors may vary in severity but on the face of it, I would regard items (c) and (f) above as seriously aggravating considerations that in themselves may warrant a significantly longer term of imprisonment.

Application of the sentencing considerations to the Appellant

60 I have outlined six aggravating factors that are relevant to the offence of arranging or assisting in the arrangement of a marriage of convenience. I reiterate that these are non-exhaustive and further, that it goes without saying that all the circumstances of the case will have to be balanced.

61 In this case, I note that there were no factors agitating for an unusually stiff sentence. This was a one-off incident committed to facilitate a sibling's desire to help a friend. The Appellant's mode of arrangement was basic. It is true that she initiated the idea of securing a marriage of convenience, approached Peer Ali and finally brought Gagandeep to the solemnisation venue. But none of this detracted from the fact that she was essentially following through on a scheme to help her brother's friend. More importantly these factors went to the question of her role in this incident, to which I now turn.

62 I had no difficulty accepting as a matter of principle, the DJ's finding that the Appellant's role was significant.

63 The question, having regard to the whole range of sentencing options available, was what would be the appropriate sentence to reflect the Appellant's overall level of culpability? In my judgment the aggravating considerations in this case were the following:

(a) The Appellant initiated and suggested that Gagandeep enter into a marriage of convenience. She was initially approached for help in securing a job for him but she opted for a wholly unwise and illegal course (see [58(b)] above); and

(b) She recruited Peer Ali and paid him a considerable sum knowing that he would involve another person, who as it eventually turned out was the "spouse", Norhayati (see [58(e)] above).

64 As against this, there appears to have been no exploitation of any of the parties. Moreover, as I have noted, this was a one-off incident and the offence was committed by the Appellant at least, not for any gain but in an ill-conceived attempt to accede to her brother's request for assistance.

65 In the circumstances, the aggravating factors present were sufficient to cross the threshold warranting a custodial sentence. However, I did not think that the circumstances were so exceptional as to call for the imposition of a sentence longer than six months, having regard to the fact that the range extended to a term of imprisonment of up to 10 years.

Mitigating factors

66 It would have been apparent from the above that there were no relevant mitigating factors that operated in favour of the Appellant. The Appellant's counsel, Mr S K Kumar, submitted that the medical report obtained by the Appellant showed that she suffered from depression, and that she had only agreed to arrange the marriage of convenience because she felt obliged to assist her brother.

67 In my judgment there was no merit in this at all. In the first place, the medical report read more like a fact-finding report than a professional medical opinion. The portion dealing with the Appellant's

supposed medical condition was much briefer than the lengthy portion where the doctor set out the background facts, seemingly in an attempt to give the reader of the report a detailed account of what factually transpired in terms that were exceedingly favourable to the Appellant.

68 Moreover, not only was the report patently lacking in objectivity, it was plainly erroneous in stating that the Appellant had been “used in a marriage for visa scam without her knowledge.” This was simply incorrect. The Appellant knew what she was doing. Either the doctor was told of the wrong facts and had not bothered to check them even cursorily or he had misunderstood the facts. On either basis it militated against any weight being given to the medical report. I digress to repeat the observation that experts owe their duty first and foremost to the court and not to the client who pays their fee. The doctor in this case did himself no credit because he did not give me the sense that he had even a basic conception of the responsibility he owed the court when he put himself forward as an expert.

69 Moreover, the report concluded that depression set in on the Appellant “after her arrest”. In so far as the medical report was tendered for the purposes of mitigation, I did not see how any depression after the offence could mitigate the Appellant’s culpability. As I pointed out to Mr Kumar in the course of arguments, many offenders who have been apprehended and face the prospect of a term of imprisonment for breaking the law may feel depressed. This cannot possibly be a mitigating consideration.

Sentencing precedents

70 For completeness, I should comment on the sentencing precedents briefly because the DJ placed considerable reliance on the sentence of nine months’ imprisonment that was imposed on Peer Ali as well as the other sentencing precedents provided by the Prosecution.

71 As regards Peer Ali, although he was party to the same transaction as the Appellant, the principle of parity of sentencing ought not to be applied blindly, without regard to the degree of culpability of each individual offender in committing the offending acts. I emphasised this recently in *Public Prosecutor v Marzuki bin Ahmad and another appeal* [2014] SGHC 166 at [45].

72 To the extent that Ms Chionh pressed me to apply the principle of parity in this case, I disagreed that this was appropriate in the present circumstances. What distinguished Peer Ali from the Appellant was that Peer Ali’s participation in the criminal endeavour was driven purely by monetary gain which, at least relative to the Appellant’s motivation, reflected a greater degree of culpability. As mentioned above at [51] to [52], a harsher sentence is warranted where monetary profit is the motivation for the offence.

73 As for the other sentencing precedents, it is important to divide them into two groups. The first group comprises cases decided prior to the enactment of s 57C of the Act. In the light of the differences between the regime then and the regime now under s 57C (see [32]–[35] above), it goes without saying that the sentencing precedents under the old regime cannot be of assistance.

74 As to the second group of cases, namely, those prosecuted under s 57C(2) of the Act, aside from the case involving Peer Ali, there were six others in the list of precedents included in Ms Chionh’s written submissions. Of the six, the arrangers in four were sentenced to nine months’ imprisonment and the remaining two to 10 months’ imprisonment.

75 I note that the four arrangers sentenced to nine months’ imprisonment had profited from the endeavour while the two arrangers sentenced to 10 months’ imprisonment do not appear from the

Statement of Facts to have so profited. However, as the decisions in the latter two cases are unreported, and no judgment of the district court is available, it would be inappropriate for me to rely on the decisions in those cases.

76 The only case amongst the six that is reported is *Public Prosecutor v Tay Szu Khee* [2014] SGDC 52 where the arranger was sentenced to nine months' imprisonment. There, the arranger who recruited one other person (aside from the "spouse") was involved in the operational aspects of the arrangement and made a profit of \$2,000 from his crime. In my view, applying the sentencing considerations that I have set out above, the fact that the offender in that case committed the offence solely for profit distinguished that case from the present.

Conclusion

77 For these reasons, I allowed the appeal and set aside the DJ's sentence of eight months' imprisonment in favour of a term of imprisonment of six months.

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