Tee Kok Boon v Public Prosecutor
[2006] SGCA 16

Case Number : Cr M 5/2006

Decision Date : 11 April 2006

Tribunal/Court : Court of Appeal

Coram : Choo Han Teck J; Andrew Phang Boon Leong JA; Tan Lee Meng J

Counsel Name(s) : Appellant in person; Hay Hung Chun (Deputy Public Prosecutor) for the respondent

Parties : Tee Kok Boon — Public Prosecutor

Criminal Procedure and Sentencing – Criminal references – Applicant seeking extension of time to apply for leave of High Court to refer questions of law of public interest to Court of Appeal – Whether issues raised questions of law of public interest – Whether any good and compellable reasons why application for leave not filed in time – Sections 60(1), 60(2) Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

11 April 2006

Choo Han Teck J (delivering the judgment of the Court):

1 This was an application made by the applicant in person. He had been convicted in the District Court for an offence of giving false evidence and was sentenced on 1 December 2004 to ten months' imprisonment. He appealed to the High Court in Magistrate's Appeal No 167 of 2004, but his appeal was dismissed by Yong Pung How CJ on 28 June 2005. No grounds were issued in respect of that decision by the High Court. There is no further appeal from the High Court in such cases. However, under the conditions set out in s 60 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed), questions of law of public interest may be referred to the Court of Appeal for its decision. Section 60 provides as follows:

> (1) When a criminal matter has been determined by the High Court in the exercise of its appellate or revisionary jurisdiction, the Judge may on the application of any party, and shall on the application of the Public Prosecutor, reserve for the decision of the Court of Appeal any question of law of public interest which has arisen in the matter and the determination of which by the Judge has affected the case.
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> (2) An application under subsection (1) shall be made within one month or such longer time as the Court of Appeal may permit of the determination of the matter to which it relates and in the case of an application by the Public Prosecutor shall be made by him or with his written consent.
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> (3) When a question has been reserved under subsection (1), the Judge who has reserved the question may make such orders as he may see fit for the arrest, custody or release on bail of any party in the case.
>
> (4) The Court of Appeal shall hear and determine the question reserved under subsection (1) and may make such orders as the High Court might have made as the Court of Appeal may consider just for the disposal of the case.
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> (5) For the purposes of this section, any question of law which the Public Prosecutor applies to be reserved or regarding which there is a conflict of judicial authority shall be deemed to be a question of public interest.

2 By virtue of sub-s (2) the applicant had to apply for leave from the High Court for leave to appeal to the Court of Appeal under sub-s (1) within a month from the date of the High Court's decision. In the present case, that would require the applicant to make his application by 28 July 2005. The application was not made within that time and, hence, the applicant had to apply to this court for an extension of time to apply to the High Court. This was what, in substance, the applicant sought to obtain before us in this motion filed on 9 March 2006. In the meantime, the applicant proceeded to serve his sentence of imprisonment.

3 The applicant filed an affidavit in support of this present application before us. He explained that he failed to apply for leave under s 60(1) in time because he had relied on his solicitor to do so. He deposed that his solicitor declined to do any more work for him after he (the applicant) declined to pay his solicitor's fees.

4 Nonetheless, on 26 July 2005 the solicitor wrote to the applicant in prison and advised him that in his view, an application under s 60(1) was not likely to succeed. The applicant appeared to have rejected this advice. In the solicitor's letter of 26 July 2005 to the applicant, the solicitor mentioned that the papers, including the motion for leave to refer under s 60, had been handed over for the applicant to make the application through the prison authority.

5 The applicant was released from prison under the Home Detention Scheme in October 2005 and was fully released on 21 January 2006. He deposed that he had great difficulty getting the necessary documents to prepare his own case. He also sought to have the Attorney-General file the request for leave to appeal to the Court of Appeal. The Attorney-General rejected that request. The applicant then proceeded in his affidavit to relate the facts concerning his trial. It is appropriate to mention here that those facts were part of the applicant's case at trial and thus, as matters of fact, were in the province of the trial judge to determine.

6 It appeared that the applicant was aware that to bring an application under s 60(1) he had to show that there was a point of law of public interest to be determined. He set out not one, but 11 alleged points of law in his affidavit, and from each of these points he further subdivided them into almost 40 alleged questions of law. It is not necessary to set out all of them because at this stage, the relevance of a point of law of public interest if it was manifest from the application, would be taken into account in deciding whether to allow the applicant's extension of time. As it were, none of the questions could be of public interest. There is a clear and strong distinction between a point of law and a point of law of public interest. In the former, the point of law would only be of interest to the applicant himself. A point of law of public interest within the meaning of s 60(1) means a question of law, the determination of which would have a general application to all future cases in which the same point might arise.

7 Indeed, many of the questions raised were questions of fact. A great number of points related to the Small Claims Tribunal's adjudication in the applicant's favour in the claim brought by his company against one Mdm Heng Siew Ang ("Mdm Heng") for commission payable in relation to a tenancy agreement. Mdm Heng had alleged that there existed a co-broking arrangement, but the Small Claims Tribunal found otherwise. It was a letter of undertaking allegedly signed by Mdm Heng, produced and relied upon by the applicant's company in the proceedings before the Small Claims Tribunal, that became the subject matter of a charge of giving false evidence. The applicant was subsequently charged with falsely testifying before the Small Claims Tribunal that he had witnessed Mdm Heng signing the letter of undertaking. Mdm Heng maintained before the Small Claims Tribunal and the District Court that her signature on the letter of undertaking had been forged. The questions raised as to whether the Small Claims Tribunal or the District Court was right as to whether the letter

of undertaking was actually signed by Mdm Heng or whether the applicant had truly seen her sign it, were matters of fact. The applicant further complained of the fact that the District Court had made a ruling against him in spite of the findings by the Small Claims Tribunal in his favour. The applicant appeared not to see that the issues were different. The issues in his criminal trial arose from the events in the Small Claims Tribunal and, therefore, were matters of fact. Furthermore, the issues in his criminal trial and consequently on appeal were very narrow in that they related to the question as to whether he had been rightly charged and convicted of giving false testimony before the Small Claims Tribunal. Another question raised, apparently as to whether the applicant's statements recorded by the investigating officer, which were admitted as prosecution evidence in his criminal trial, were inconclusive or conflicting statements (Question Three), was also a question of fact.

8 These issues were dealt with at the trial and the applicant's appeal against the conviction was dismissed by the High Court. Section 60(1) permits a further appeal only on questions of law of public interest. Hence, unless the applicant was able to identify a point of law as such his application for an extension of time would fail on that ground alone.

9 As regards his other questions, even if they could be construed as questions of law, they were questions of law that were not of public interest. They were questions of law that would only be of interest to the applicant alone. For example, in Question One, the applicant queried whether, since the allegation of forgery was not substantiated in the Small Claims Tribunal, could he have been legitimately prosecuted for it in the District Court? There was no question that those were separate proceedings and the prosecution was legitimately instituted. Question Six was another way of stating the same. There the applicant stated:

> Whether a criminal conviction can be sustained in the face of a ruling by a small claims tribunal judge who has duly exercise [*sic*] the powers of adjudication and satisfied itself that there was "no evidence to substantiate the respondent [*sic*] contention that there was a co-broking arrangement".

10 The second burden on the applicant in an application under s 60(2) for an extension of time, is to show good and compellable reasons why his application for leave under s 60(1) was not made in time. In his affidavit of 9 March 2006 the applicant set out his grounds for not applying for leave under s 60(1) sooner. He blamed his lawyer for it although the specific complaint there was that the lawyer did not hand over the relevant documents to him. He deposed that eventually, he had to obtain the record from the courts and that was on 7 December 2005. From 7 December 2005 till 9 March 2006 was a period of about three months. In the context of s 60 of the Act that was a long period of time especially when it was clear from the applicant's affidavit that his lawyer had actually advised him in writing on 26 July 2005 that he saw no merit in an appeal in his case, and had advised him so as early as two weeks previously.

11 In the circumstances, we were of the view that there were no grounds to grant his leave to apply out of time and consequently, his application was dismissed.