Teo Kian Leong v Public Prosecutor
[2002] SGHC 43

Case Number : MA 319/2001

Decision Date : 04 March 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Lim Tse Haw (Harry Elias Partnership) for the Appellant; Ivan Chua Boon Chwee (Deputy Public Prosecutor) for the Respondent

Parties : Teo Kian Leong — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Date of commencement of sentencing – Appellant undergoing sentence of imprisonment – Whether further sentence of imprisonment to commence immediately or at expiration of existing term – Application of common law principles of sentencing – Whether total sentence disproportionate to gravity of offences – s 234(1)Criminal Procedure Code (Cap 68)

Judgment

GROUNDS OF DECISION

This is an appeal against the trial judge's decision to order a subsequent term of imprisonment to commence after the expiration of the appellant's existing term of imprisonment which he is currently serving for other offences. After hearing the arguments of the appellant's counsel, I dismissed the appeal and affirmed the decision of the trial judge. I now set out my reasons.

Facts

2 The appellant, Teo Kian Leong, had initially faced a total of 11 charges under s 102(b) of the Securities Industry Act (Cap 289) for engaging in acts connected with the purchase and sale of securities, which operated as a deceit on another person. These 11 charges related to 11 different individuals, and each of these 11 charges related to a number of share transactions. On 1 November 2000, the prosecution proceeded on eight of these 11 charges while the remaining three charges were stood down. The appellant, who claimed trial to the eight charges, was convicted of all eight charges at the conclusion of the trial. He was sentenced to serve six months' imprisonment for each of the eight charges. The trial judge ordered two of the sentences of imprisonment to run consecutively with the remaining sentences to run concurrently, making the total term of imprisonment 12 months. The appellant's conviction and sentence relating to the eight charges was subsequently affirmed by this court when brought up on appeal before me in *Teo Kian Leong v PP* [2002] 1 SLR 147.

3 As a result of the appellant's representations to the Attorney-General's Chambers, the prosecution agreed to proceed on only one of the three remaining charges and applied for the other two charges to be taken into consideration for the purposes of sentencing. On 9 November 2001, the appellant pleaded guilty to the said charge and was sentenced to serve six months' imprisonment which the trial judge ordered to commence at the expiration of his existing 12-month sentence bringing the cumulative term of imprisonment to 18 months.

The Appeal

4 While counsel accepts that the six month term of imprisonment is perfectly appropriate, he contends that the trial judge had erred in the exercise of his judicial discretion when ordering the said sentence to commence at the expiration of the appellant's current sentence instead of immediately. This resulted in a cumulative sentence of 18 months which is manifestly excessive and wholly disproportionate to the facts of the case and the severity of the offences.

5 The sentencing discretion of the Singapore courts in respect of imposing a subsequent sentence on an accused who is currently serving a term of imprisonment is governed by s 234(1) of the Criminal Procedure Code (Cap 68), which reads:

> Where a person who is an escaped convict or is undergoing a sentence of imprisonment is sentenced to imprisonment the latter sentence of imprisonment *shall* commence *either* immediately *or* at the expiration of the imprisonment to which he was previously sentenced as the court awarding the sentence directs. [Emphasis added]

6 It was held in the case of *Peter Tham Wing Fai v PP* [1989] 2MLJ 404 that this discretion should be exercised "judiciously". In that case, Chao JC (as he then was) refused to order the one year term of imprisonment for criminal breach of trust to commence on the date of conviction and ordered that it run consecutive to the eight year term of imprisonment for 36 forgery charges which the accused was then serving. He took up counsel's invitation to put himself in the shoes of the trial judge and considered whether the trial judge would have ordered the one year term of imprisonment to run consecutive to the eight year term, if the charge for criminal breach of trust was dealt together with the earlier 36 charges for forgery. Chao JC found that, having regard to the circumstances as a whole, there was more than an even chance that the trial judge might have ordered the one year term of imprisonment to run consecutive to the 8-year term. Chao JC also distinguished the case of *R v Ames, R v Carey* [1938] 1 ALL ER 515, on the ground that the subsequent charge in that case was similar to the earlier charge which was not so in the case before him.

7 To my mind, the court's judicious exercise of its sentencing discretion in relation to s 234(1) would necessarily involve having regard to the common law principles of sentencing applicable to the imposition of consecutive sentences. These common law principles are namely, the one transaction rule and the totality principle which have been adopted by the Court of Appeal in *Kanagasuntharam v PP* [1992] 1 SLR 81 and applied in numerous other local decisions. A sentencing judge, when deciding whether to order a subsequent term of imprisonment to run immediately or at the expiration of an existing term of imprisonment imposed on an earlier occasion, should therefore have regard to whether the subsequent offence arose in the "same transaction" as the earlier offence(s), and also to the totality of the sentence to be served (see *Mohd Akhar Hussain v Assistant Collector of Customs* A.I.R 1988 S.C 2143). Of course, the application of the one transaction rule is subject to s 234(1) which only extends the court's sentencing discretion to ordering the subsequent sentence to commence immediately.

8 However, one must bear in mind that the common law principles are really there to guide the sentencing courts, whose primary duty is to determine the appropriate sentence which would best ensure that the ends of justice are met. No single consideration can conclusively determine the proper sentence and, in arriving at the proper sentence, the court must balance many factors, sometimes rejecting some. One factor that the court should consider is whether the totality of the sentence to be served is proportional to the inherent gravity of all the offences committed by the accused. Hence, while the individual sentence for a particular offence may be perfectly appropriate, the cumulative effect of the sentences may result in a total term of imprisonment that is disproportionate to the overall criminality of the accused. In contemplating the totality of the

sentences which the accused has to undergo, a question that the presiding judge can consider is : If all the offences had been before him, would he still have passed a sentence of similar length? If not, the judge should adjust the sentence to be imposed for the latest offence in the light of the aggregate sentence : see *Millen* (1980) 2 Cr App R (S) 357 and *Watts* (2000) 1 Cr App R (S) 460. Whether this is done by imposing a shorter sentence to run consecutively or a longer sentence to commence immediately, does not at the end of the day make much difference, although in principle, the judge should as far as possible try to impose a sentence that is reflective of the gravity of the latest offence(s) in question.

9 Returning to the facts of the present case, I was satisfied that, given the aggravating factors of the case, a total sentence of 18 months was not disproportionate to the gravity of his offences. Admittedly, although the total amount of loss for all 11 charges (approximately $500 000) caused by the appellant would pale in comparison to *PP v Hew Keong Chan* (approximately $1.74m, sentenced to 12 months' imprisonment) and *Syn Yong Sing David v PP* (approximately $ 1.3m, sentenced to four months' imprisonment), I found that the aggravating factors in this case far outweighed the factor relating to the amount of loss.

10 In fact, I had already dealt with these aggravating factors as well as the case of *PP v Hew Chong Chan* (DAC 21810-6/99) and *Syn Yong Sing David* (MA 226/98/01) in my decision in *Teo Kian Leong v PP* (above). However, to recapitulate, the appellant abused the trust reposed in him by 11 different individuals. This is no small number. Furthermore, unlike the persons involved in the above two cases cited, these 11 individuals had no knowledge and did not authorise the appellant to use their accounts for his own benefit. The entire scheme to deceive and profit from his 11 clients and later escape responsibility was orchestrated solely on the appellant's own accord. Not only did the appellant repeatedly assure his clients, who questioned him about these additional transactions in their account, that they were "mistakes" which he would rectify, he boldly continued to carry on with similar transactions and accumulated even greater losses at the expense of his clients.

11 In light of the aggravating circumstances of this case, allowing the appellant's second term of imprisonment to commence on the date it was ordered would have the effect of make his total term of imprisonment only 12 months. This, in my opinion, was not only wholly disproportionate to the criminality of the appellant but served to reduce the gravity of his crime, making it an ineffective deterrence for like-minded individuals. Therefore, based on the foregoing reasons, I dismissed the appeal.

Sgd:

YONG PUNG HOW
Chief Justice