

Mohammed Walik Shafiq bin Adzhar Sah v Public Prosecutor
[2002] SGHC 194

Case Number : MA 143/2002

Decision Date : 28 August 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Appellant in person; Lim Yew Jin (Deputy Public Prosecutor) for the respondent

Parties : Mohammed Walik Shafiq bin Adzhar Sah — Public Prosecutor

Courts and Jurisdiction – Magistrates' courts – Magistrate Arrest Case – Trial judge holding concurrent appointment as district judge – Sentencing powers of trial judge in such situations – Miscellaneous Offences s 35(1) (Public Order and Nuisance) Act (Cap 184, 1997 Ed)

Criminal Procedure and Sentencing – Revision of proceedings – Revisionary powers of High Court – Purpose of such powers – ss 266(1) & 268(1) Criminal Procedure Code (Cap 68)

Criminal Procedure and Sentencing – Sentencing – Reformatory training – District judge sitting as magistrate sentencing appellant to reformatory training – Whether district judge can make such order – Whether district judge acting beyond sentencing powers – Correct course of action in such situation – ss 13(1), 13(2) & 13(3)(a) Criminal Procedure Code (Cap 68)

Judgment

FOUNDATIONS OF DECISION

The appellant pleaded guilty to the following charge in the Magistrate's Court:

You, Mohammed Walik Shafiq Bin Adzhar Sah, M/17 years (S8505726Z), are charged that you on 20th April 2002 at about 4:20 am, at Blk 57 Marine Terrace, Singapore, did have in your possession of one light pink coloured mountain bike, which might be fraudulently obtained, and for which you failed to account satisfactorily as to how you came into possession by the same and you have thereby committed an offence punishable under section 35(1) of the Miscellaneous Offences (Public Order and Nuisance) Act, Chapter 184.

2 The appellant was convicted and sentenced to undergo reformatory training. He appealed for a prison sentence instead. I heard his appeal on 9 July 2002 and dismissed the appeal. I now give my reasons.

The facts

3 The appellant is Mohammed Walik Shafiq Bin Adzhar Sah, a 17 year old male. The facts of the case were not in dispute. On 20 April 2002, at about 4.20 am, the appellant was spotted by a police officer outside a shop unit at Blk 57 Marine Terrace, sitting on a light pink-coloured mountain bike. The police officer approached the appellant with the intention to conduct a spot check on him. However, the appellant rode off on the bike upon seeing the police officer approaching.

4 The police officer gave chase and intercepted the appellant, who fell off his bike. He fled on

foot towards Blk 13 Marine Terrace. The officer conducted a search on Blk 13 and detained the appellant on the 7th floor of that block.

5 Upon questioning as to how he came to possess the mountain bike, the appellant informed the police officer that his friend, one 'Boy' had lent it to him. The appellant was unable to locate 'Boy' and he was thereupon arrested on suspicion of having fraudulently obtained the mountain bike.

Appeal against sentence

6 The appellant pleaded guilty to the charge before the Magistrate's Court. Before this Court, he appealed for a prison sentence instead of a sentence of reformatory training. In passing sentence, the district judge, sitting as a magistrate, was mindful of the fact that rehabilitation is the dominant objective in sentencing a youthful offender. He weighed carefully the mitigating factors of the plea of guilt, the recovery of the property and the appellant's youth. He also considered the aggravating circumstances, namely that the appellant had previously been sent to the Singapore Boys' Home for the offences of armed robbery, putting a person in fear of injury in order to commit extortion, and voluntarily causing hurt; as well as the fact that the appellant had committed the present offence less than a year after his formal discharge from the Boys' Home.

7 The judge, after considering the foregoing factors, was satisfied that the matters mentioned in s 13(1) of the Criminal Procedure Code (Cap 68) ("CPC") were present. Section 13(1) provides as follows:

13 – (1) Where a person is convicted by the High Court or a District Court of an offence punishable with imprisonment and that person –

(a) is on the day of his conviction, not less than 16 but under 21 years of age; or

(b) is, on the day of his conviction, not less than 14 but under 16 years of age and has, prior to his conviction, been dealt with by a court in connection with another offence and had, in respect of that other offence, been ordered to be sent to an approved school established under section 62 of the Children and Young Persons Act (Cap. 38),

and ***the High Court or District Court*** (as the case may be) is satisfied, having regard to his character and previous conduct and to the circumstances of the offence of which he is convicted, that it is expedient with a view to his reformation and the prevention of crime that he should undergo a period of training in a reformatory training centre, that Court may, in lieu of any other sentence, pass a sentence of reformatory training". [Emphasis added]

The judge then proceeded to sentence the appellant to undergo reformatory training. In doing so, the judge rightly recognised the fact that under s 13(1), only the High Court or District Court may award the sentence of reformatory training. However, the judge fell into error in thinking that he held the sentencing powers of a District Court due to his concurrent appointment as a district judge, even though he was acting in the capacity of a magistrate in the present case. In *PP v Nyu Tiong Lam & Ors* [1996] 1 SLR 273, it was decided that a district judge acting in the capacity of a magistrate only held the sentencing powers of a Magistrate's Court. The reason is that when the prosecution classifies a case as a 'Magistrate Arrest Case' ("MAC"), as in the present case, it is tacitly invoking the jurisdiction of a Magistrate's Court. It is irrelevant that the judicial officer who hears the MAC happens to be a district judge. Otherwise, it will be grossly unfair to an accused, who may have chosen to plead guilty on the understanding that a "MAC" classification means that the sentencing limits of a Magistrate's Court applies.

8 The correct course of action for the judge to take in this case was to commit the appellant in custody for sentence by a District Court under s 13(2) CPC. If the District Court, upon inquiring into the circumstances of the case, is also satisfied of the matters mentioned in s 13(1) CPC, it may then proceed to sentence him to reformatory training under s 13(3)(a) CPC. It is not within the powers of a Magistrate's Court to sentence the appellant to undergo reformatory training without going through the District Court.

9 The judge has therefore exceeded his sentencing powers. In my opinion, this was an appropriate case for the High Court to exercise its powers of revision, as conferred by s 268(1) CPC. One of the purposes behind conferring powers of revision on the High Court is to ensure that any sentence awarded by lower courts falls within their sentencing jurisdiction. This appears clearly from s 266(1) CPC which reads as follows:

266 -(1) The High Court may call for and examine the record of any criminal proceeding before any subordinate court for the purpose of satisfying itself as to the **correctness, legality or propriety of any finding, sentence** or order recorded or passed and as to the regularity of any proceedings of that subordinate court.
[Emphasis added]

10 Towards this end, s 268(1) specifically provides that the High Court, under its revisionary jurisdiction, may exercise any of the powers under s 256 CPC which is otherwise exercisable only upon an appeal. Section 256(b)(i) in turn provides that the High Court has the power to:

...reverse the finding and sentence and acquit or discharge the accused or **order him to be retried by a court of competent jurisdiction** or committed for trial; [Emphasis added]

As will be clear by now, the court of competent jurisdiction in the present case to award reformatory training is the District Court, and not the Magistrate's Court. Therefore, under the powers of revision conferred by s 268(1) CPC, read with s 256(b)(i), I ordered the sentence of reformatory training to be set aside and the case remitted to the Magistrate's Court for the Magistrate's Court to commit the appellant in custody for sentence to a District Court under s 13(2) CPC.

Sgd:

YONG PUNG HOW

Chief Justice

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