Credit Corporation (M) Bhd v Public Prosecutor
[2000] SGHC 170

Case Number : Cr Rev 15/2000

Decision Date : 16 August 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Yoga Sharmini Yogarajah and Subashini Narayanasamy (Haridass Ho & Partners) for the petitioner; Hee Mee Lin (Deputy Public Prosecutor) for the respondent

Parties : Credit Corporation (M) Bhd — Public Prosecutor

Criminal Procedure and Sentencing – High court – Powers of revision – Applicable principles – Whether hardship caused by forfeiture attracts criminal revision

Immigration – Criminal offences – Forfeiture of vehicle used in commission of immigration offence – Mandatory forfeiture once conditions met – Whether innocence of vehicle owner irrelevant – Whether provision of written notice on grounds of seizure required – s 49(6) Immigration Act (Cap 133, 1997 Rev Ed)

Statutory Interpretation – Construction of statute – Purposive approach – s 9A(1) Interpretation Act (Cap 1, 1999 Ed)

:This is a petition by a Malaysian finance company, Credit Corporation (M) Bhd (`the petitioner`), for a revision of a vehicle forfeiture order by the district court. The petitioner was the owner of the vehicle and had financed its purchase made by Hapsah bte Rahmat (a Malaysian) (`the hirer`), through a hire purchase agreement. As in a typical human smuggling syndicate`s ***modus operandi*** , the vehicle was stolen, had its engine illegally substituted and a false licence plate placed. The vehicle was used in the illegal smuggling of two Indian immigrants. The three immigration offenders have been dealt with.

The statutory provision under s 49(6) Immigration Act is unambiguous and mandatory. Forfeiture must be ordered if the vehicle has been used to commit an immigration offence. The district court rightly gave a forfeiture order of the vehicle. I dismissed the petition.

Although the court empathises with the innocent parties, whose vehicles are stolen and illegally used, the law is clear on its mandatory provision. I have taken the opportunity to substantiate this mandatory legislative provision, from judicial support from England and an institutional perspective, putting the statutory provision as part of a whole mechanism for reducing illegal immigration and particularly, for `drying up` the easy supply of vehicles for human smuggling syndicates.

The facts

Pang Siew Peng (`the offender`) was arrested at the Woodlands Checkpoint for using a vehicle, a Proton car, to smuggle two Indian nationals (`illegal immigrants`) into Singapore. The vehicle was seized on the same day pursuant to s 49(1) Immigration Act.

He was convicted of two charges of human smuggling, under s 57(1)(c) Immigration Act, and was sentenced to 30 months` imprisonment and eight strokes of the cane. The two illegal immigrants were each sentenced to one month`s imprisonment and four strokes of the cane.

The petitioner had financed the purchase of the vehicle, by Hapsah bte Rahmat (`the hirer`) in

Malaysia, through a hire purchase agreement. It was insured by PanGlobal Insurance Bhd (`the insurer`). The vehicle was stolen in Malaysia on 18 August 1999. Its original licence plate was No JFB 3774. The original engine, a key component of the vehicle, was substituted with another engine without authorisation. Its licence plate was also illegally replaced with a false one, No JEM 3765. Based on the chassis number of the vehicle, the hirer and the insurer were contacted and informed of the seizure of the vehicle, and later its forfeiture.

However, for some inexplicable reason, the petitioner was not so informed, although its identity was made known to Singapore Immigration and Registration by the hirer, prior to the forfeiture application by the prosecution to the district court. The petitioner applied for the forfeiture order to be reversed.

Mandatory forfeiture under s 49(6) Immigration Act when two conditions are met

The petition resembled closely the case of **Public Finance Bhd v PP** [1997] 3 SLR 354 . In ***Public Finance Bhd*** , in interpreting s 49(6) Immigration Act, I pointed out that once the two conditions under s 49(6) are met, forfeiture of the vehicle is mandatory. The two conditions are:

(a) commission of the offence; and

(b) use of the vehicle in the commission of the offence.

This stipulation is clear, unmistakable and exhaustive. There are no other factors to be considered. It precludes reliance by the court on any other factors that might be raised by the offender or, indeed by any other party such as the owner of the vehicle.

The fact that the vehicle was stolen, illegally altered and used for human smuggling, and the fact that the vehicle was used by the offender, a person not in lawful possession of it, for human trafficking, are irrelevant.

Indeed, it is within the relevant authorities` discretion to make a forfeiture application to the district court. Finance and car rental companies can make representations to them. However, once the authorities make a forfeiture application, the court will only be concerned whether the two conditions have been met. And if they have been, a forfeiture order must be made.

Absence of criminal involvement by the petitioner is irrelevant

The petitioner claimed that as an innocent party it was unjustifiable that they be penalised. However, I made clear in **Public Finance Bhd v PP** [1997] 3 SLR 354 , **PP v Mayban Finance (Singapore) Ltd** [1998] 1 SLR 462 and **PP v M/s Serve You Motor Services** [1996] 1 SLR 669 that, even though the court sympathised with the owners, forfeiture must be ordered once it has been used in the commission of the offence, regardless of whether the petitioner had participated in the criminal offence. The provision is clear and mandatory. The owners would have to be left to their remedies against the offenders.

Counsel for the petitioner submitted that s 49(6) Immigration Act should be given an interpretation that would promote the purpose or objective underlying it, rather than a literal interpretation that would not promote the purpose or objective.

Section 9A of the Interpretation Act stipulates that an interpretation that would promote the purpose

underlying the written law shall be preferred to one that would not so promote the purpose. The court may refer to the Hansard. A purposive approach to statutory interpretation could be taken even if a provision was not ambiguous or inconsistent: **Planmarine AG v Maritime and Port Authority of Singapore** [1999] 2 SLR 1 (CA).

However, a purposive interpretation of s 49(6) Immigration Act would still yield a similar mandatory result.

During the Parliamentary debate on 2 May 1996, the Minister for Law, Professor Jayakumar made clear that forfeiture acts as a strong deterrent. If vehicles were returned to innocent owners, human smuggling syndicates would find it easier to obtain vehicles to carry out human smuggling, without the risk of confiscation. All they need to do is to hire or borrow the vehicles. Doing away with the mandatory provisions would only increase the pool of easy resources available to human smuggling syndicates.

Mandatory forfeiture would not directly stop the human smuggling syndicates from stealing vehicles. Far from it. The syndicates would continue stealing vehicles and paying young offenders to carry out human smuggling across the causeway.

Instead, mandatory forfeiture of the vehicles puts the onus on the vehicle owners to exercise care and responsibility when lending or hiring out their vehicles. By extension, it also places onus on hirers and borrowers to exercise greater care in preventing their vehicles from becoming easy theft targets.

In short, the mandatory provision for forfeiture ensures that a legal loophole does not exist. It is meant to `dry up` the easy supply of vehicles for human smuggling. A purposive interpretation of s 49(6) Immigration Act would yield a similar mandatory forfeiture order once the two conditions have been met.

Notices under ss 49(2) and 49(3) of the Immigration Act

Under s 49(2) Immigration Act, the seizing officer must give a notice in writing on the grounds of seizure to the owner, if known. Section 49(3) Immigration Act stipulates that the notice is not required if the seizure is made in the presence of or with the knowledge of the offender or owner of the vehicle.

The vehicle was seized in the presence of the offender at the Woodlands Checkpoint. The offender was served a notice of seizure under s 49(2) Immigration Act. In such circumstances, as I said in ***Public Finance Bhd*** , s 49(3) Immigration Act obviates the need for any further notice of seizure to be given to the petitioner.

In fact, as s 49(6) Immigration Act is exhaustive, the petitioner was not even entitled to make representations to the district court for the return of the vehicle. This was not a valid argument.

Requirements for criminal revision

Counsel for the petitioner rightly pointed out that neither the petitioner nor the hirer could have foreseen that the vehicle would be stolen and used for human smuggling. Neither could they in the circumstances do anything more to prevent the theft and, later, its forfeiture. Therefore, counsel submitted that the petitioner suffered `injustice and undue hardship`.

I said in **Ang Poh Chuan v Public Prosecutor** [1996] 1 SLR 326 that, although it is a wide discretion vested with the court, there must be some serious injustice, in other words, something palpably wrong in the decision that strikes at the basis as an excuse of an exercise of judicial power by the district court, for the High Court to exercise criminal revision.

I also made clear in ***Ang Poh Chuan*** that hardship caused by forfeiture alone could not attract criminal revision. Injustice could be established only if it was shown that forfeiture ought not to have been ordered.

As I said in ***Public Finance Bhd*** , even if the petitioner had been given express notice of the seizure, it would not have been able to make representations as to the forfeiture of the vehicle. In the circumstances, the requirements for criminal revision were not satisfied.

Judicial support from England

Such mandatory forfeiture provision is not new to the Commonwealth jurisdictions. One can derive support from the English Court of Appeal`s decision in **Customs and Excise Commissioners v Air Canada** [1991] 2 QB 446[1991] 1 All ER 570, where the court strictly interpreted the mandatory statutory provisions in their Customs and Excise Management Act 1979.

On a flight to the United Kingdom, the cargo in a large commercial aircraft of Air Canada was found to contain cannabis resin. The aircraft was seized and made liable to forfeiture. The English Court of Appeal, following an established practice, interpreted the provisions as they were, strictly and clearly, without jeopardising their legislative intent.

The English Court of Appeal accepted that the liability to forfeiture of the aircraft was absolute and not dependent on proof of mens rea of the owner or user. The liability to forfeiture depended solely on the fact that it had been used for the commission of an offence, wholly independent of any knowledge, motive, consent or attitude of the owner or user of the aircraft. Intention to transgress or commit an offence in any way was irrelevant.

This example from England shows that Singapore is not alone in this area. It is not objectionable that the liability acts in rem. It is never a rule at common law that mens rea must be presumed to be a prerequisite of the incurring of liability to forfeiture. Various other cases can also be referred to, such as ***Lord Advocate v Crookshanks*** (1888) 15 R (Ct of Sess) 995, **De Keyser v British Railway Traffic and Electric Co Ltd** [1936] 1 KB 224, **Customs and Excise Commissioners v Jack Bradley (Accrington) Ltd** [1959] 1 QB 219[1958] 3 All ER 487 and **Denton v John Lister Ltd** [1971] 3 All ER 669.

Justification of the mandatory provision

I will put forward a reasoning from an institutional perspective, to look at the justification of the mandatory provision. Section 49(6) Immigration Act provides a severe deterrent and sanction in the hands of the authorities to prevent human smuggling. This mandatory provision should be regarded as part of the preventive strategies. In this context, prevention means that the owners must take greater care of their vehicles and ensure that it is harder for offenders to steal the vehicles for human smuggling. It encourages greater vigilance to reduce the ready supply of vehicles for human smuggling.

Crimes result not only from the motivation of the offender but also from the situation in which the offender finds himself. If the situation can be altered to the offender`s disadvantage, for instance, increased chances of detection and swift punishment, and reduced supply of means to carry out the offences, then the opportunities for crime will certainly be reduced. This situational prevention can be extrapolated here.

In short, this is part of the purposive manipulation of the immediate environment in which human smuggling can be reduced from the reduction of the supply of vehicles, detection mechanism, deterrent effect in its punishment, to reduced opportunity of movement, harbouring and employment within Singapore. It is part of a whole scheme to reduce illegal immigration.

Crime prevention is a co-ordinated approach. We are aware of the extent of severity of the impact of human smuggling, such as that in the recent calamity in Dover, England that caused 58 illegal Chinese immigrant deaths on 18 June 2000, or the 180 illegal immigrants that were known to have died this year alone in Italian waters, often pushed into the sea and left to drown by smugglers trying to lighten their boats to get away from the Italian coast-guard patrols. I also referred to the Dover calamity in rejecting the appeal in ***Mohamed Zakir Mohamed Ali v PP*** (shipmate in stowaway case, 3 August 2000). The human smuggling syndicates are highly organized and international in their operations. Their illicit gains are extremely lucrative and exploitative. The massive poverty, enormous population pressure in and around the region, and the robust prosperity in Singapore makes Singapore an attractive destination.

The petition was about as hard a case as could well be. However, I could not allow the petition. Otherwise, a loophole would be created for car rental and finance companies, and become a soft option for the syndicates to so operate and exploit.

In short, the nature of the crime, its impact on public safety and social order, the punishment that it entails, the absence of social obloquy, the wording of s 49(6) Immigration Act and its context show very clearly Parliament`s intention that this punishment of forfeiture be meted out regardless of intent or knowledge. The problem of illegal immigrants is pernicious. The responsibility for a policy decision on this must remain with the Parliament. The legislative intent is unmistakably clear. The court should not dilute the overall deterrent effect of the statutory provision.

Advice on trade practices to the companies to avoid further losses

It is unfortunate that car rental or finance companies become unwitting victims to human smuggling syndicates. To avoid further losses, car rental and finance companies should immediately start incorporating the requirement of guarantees or insurance coverage into their hire purchase or rental agreements. These guarantees or insurance policies ought to cover the losses of theft and forfeiture by the relevant authorities. The costs of the guarantee or insurance protection will necessarily have to be borne by the individual hirers and borrowers. The onus will thus shift to the individuals to be more vigilant.

This measure can be practised on an industry-wide basis. The cost will be spread out and I do not foresee the individuals having to shoulder too sharp an increase in costs.

Conclusion

I dismissed the petition. Car rental and finance companies should modify their trade practices to cover themselves. The cost will be passed down to car hirers or borrowers. With the deterrent effect of pecuniary loss, all parties will be made to be more careful in handling their vehicles.

There will always be unsuspecting victims in cases where vehicles are stolen and illegally used for human smuggling. But with a wider net and clearer deterrent messages, the public should be prompted to do their bids to reduce the easy supply of vehicles for human smuggling syndicates.

Outcome:

Petition dismissed.