Sarjit Singh s/o Mehar Singh v Public Prosecutor
[2002] SGHC 217

Case Number : Cr Rev 15/2002

Decision Date : 18 September 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Petitioner in person; Tai Wei Shyong (Deputy Public Prosecutor) for the respondent

Parties : Sarjit Singh s/o Mehar Singh — Public Prosecutor

Courts and Jurisdiction – Jurisdiction – Distinction between roles of revisionary and appellate court – Whether and when court to exercise revisionary powers

Criminal Law – Offences – Criminal breach of trust by lawyer – Entrustment of property – Whether entrustment of task of collecting moneys on client's behalf constitutes entrustment of property – Whether lawyers fall under purview of s 409 Penal Code – Whether petitioner guilty of offence charged – s 409 Penal Code (Cap 224)

Criminal Procedure and Sentencing – Sentencing – Criminal breach of trust by lawyer – Whether such offence calls for custodial sentence of deterrent nature – Aggravating circumstances – Whether sentence manifestly inadequate

Judgment

GROUNDS OF DECISION

Introduction

This petition for revision arose out of the judgment of district judge Audrey Lim in which she convicted the petitioner on a charge of criminal breach of trust under s 409 of the Penal Code for misappropriating a sum of $4,815.24 belonging to his client. The petitioner was sentenced to seven months imprisonment.

The facts

The undisputed facts

2 The petitioner was at the material time an advocate and solicitor and the sole proprietor of Sarjit Singh & Co. In early November 1998, Muhammed Bin Abdul Latiff ('Latiff') approached the petitioner seeking to claim unpaid emoluments amounting to $4,815.24 from his ex-employer, Eurofibre Engineering Pte Ltd ('Eurofibre').

3 The petitioner agreed to act for Latiff and was paid $200 by cheque on 9 November 1998 to write a letter of demand which was duly sent to Eurofibre. The petitioner was subsequently paid an additional $500, also by cheque, to issue a writ against Eurofibre on 17 November 1998.

4 Pursuant to the petitioner's letter of demand dated 10 November 1998, Eurofibre sent a cheque dated 16 November 1998 to the petitioner's firm which the petitioner banked into his client's account around 23 November 1998. The monies were subsequently withdrawn by the petitioner in stages between 25 November 1998 and early January 1999.

5 The petitioner did not inform Latiff that Eurofibre had paid the $4,815.24 until about July 2001

after the police had commenced their investigations. Thereafter the petitioner and Latiff met at Peninsula Plaza and the petitioner paid Latiff a sum of $5,515.24 being of the aggregate of $4,815.24, $200 and $500. At this meeting, Latiff had, unknown to the petitioner, taped the entire conversation.

The petitioner's version of the facts

6 It is appropriate at this juncture to set out the petitioner's version of the facts as they mapped out his defence to the charge.

7 The petitioner had rendered advice not just for Latiff's claim against Eurofibre, but also for Latiff's plans to set up a competing business against Eurofibre as well as on an unrelated security matter. He had also rendered advice in relation to Junaidei, a business partner of Latiff who was facing a claim from Eurofibre.

8 Subsequently, he had instructed his wife, Geetha, to send a bill of costs of $5,750 to Latiff for the advice rendered. She had forgotten to do so because they were beset with personal and family problems. Thinking that Geetha had already sent the bill of costs to Latiff, the petitioner withdrew the $4,815.24 from the client's account to set off his legal costs.

9 Subsequently, the petitioner discovered that his wife had not sent the amended bill of costs to Latiff. He decided to return the money to Latiff as it was unfair and wrong to withdraw the money from the client's account since Latiff had not signed the bill of costs.

10 The petitioner met up with Latiff at McDonalds East Coast and apologised. He wanted Latiff to record the matter as a mistake so that he could get the investigating authorities to withdraw the matter against him. Latiff was angry but willing to do so provided that the petitioner returned the $4,815.24 owed as well as a refund of $700. The petitioner was surprised by the demand for the $700 but agreed as he felt that Latiff would not otherwise help him.

11 They subsequently met at Peninsula Plaza and the petitioner returned $5,515.24 to Latiff. He then asked Latiff to endorse the bill of costs to show that there had been a mistake. He also offered to compensate Latiff with $10,000 to placate Latiff and also to help Latiff who was in financial difficulties. However Latiff refused to do so as he did not trust the petitioner.

The proceedings below

The petitioner's defence in the court below

12 The petitioner argued that there was no case to answer as s 409 of the Penal Code did not apply to an advocate and solicitor. In the alternative, he claimed that he was entitled to offset the costs of his legal fees against the money withdrawn and hence there was no dishonest misappropriation.

The trial judge's holding

13 The trial judge held that s 409 of the Penal Code was the proper charge as the petitioner had been entrusted with the monies in his client's account in the course of his duties as an advocate and solicitor.

14 The trial judge also dismissed the petitioner's contention that he had withdrawn the monies without any dishonest intention. Instead she found that the petitioner had not only misappropriated

the $4,815.24 with dishonest intent, but had then systematically set about to cover his tracks by concealing Eurofibre's payment from Latiff and then fabricating a bill of costs by concocting instances of advice rendered to justify his alleged set off.

15 The trial judge having found that the prosecutor had proved its case beyond a reasonable doubt and that the petitioner had failed to raise a reasonable doubt by his defence, convicted the petitioner.

16 In sentencing the petitioner to seven months imprisonment, the trial judge took into account several factors: that the sum misappropriated was not very large; that he had claimed trial; his position as an advocate and solicitor in a position of trust vis--vis his client; that he had set out to conceal his misappropriation by hiding his receipt of the money from his client; his concoction of documents to bolster his defence; his allegations against the prosecution and courts; his lack of remorse after his conviction; that he had made restitution, although only to get Latiff to assist him in withdrawing the charges; and the sentencing guidelines laid down in the precedent cases.

Petition for revision

17 In this petition for criminal revision, the petitioner raised two issues:-

> (1) that the trial judge had erred in law in holding that s 409 of the Penal Code was the correct charge in the circumstances; and
>
> (2) that the trial judge had made numerous errors in her findings of fact.

Error of law

18 The petitioner, relying on the case of *Gopalakrishnam Vanitha v PP* (1999) 4 SLR 307, argued that being entrusted with the doing of a job was not the same thing as being entrusted with property. He thus argued that the situation of an advocate and solicitor being entrusted with the job of recovering monies on behalf of a client did not fall within the scope of s 409 of the Penal Code as there was no entrustment of property.

19 I found no substance in such an argument. *Gopalakrishnam* could be easily distinguished as the facts there involved a confidential secretary cum office administrator who was not entrusted with the funds of the company.

20 The position was clearly different here. An advocate and solicitor will in the nature of his work regularly receive sums of money on behalf of his clients. They have access to and control of these monies and this is highlighted by the legal requirement of having to deposit such monies received in a 'client account.' It is this measure of access and control that the court would look at in determining whether there has been entrustment.

21 Thus advocates and solicitors must be taken to have been entrusted with their client's monies when they are entrusted with the task of collecting the monies on their client's behalf. Hence they would fall within the purview of s 409 of the Penal Code. This has been accepted although without being specifically mentioned by the Singapore Court of Appeal in *Re Ram Kishan* (1992) 1 SLR 529 and the Singapore High Court in *Wong Kai Chuen Philip v PP* (1990) SLR 1011.

Errors in finding of fact

22 In the alternative, the petitioner argued that the trial judge had misread the evidence so as to cause a serious miscarriage of justice. In particular, he argued that the trial judge had erred in finding that he had:

> (a) set out to conceal and cover his receipt of the $4,815.24 from Eurofibre from Latiff; and
>
> (b) fabricated the bill of costs by claiming costs for advice not rendered.

23 I found these contentions without any merit as these findings were amply supported by the evidence adduced. However, for the sake of completeness, I will examine both contentions in detail.

Petitioner had set out to conceal and cover his receipt of $4,815.24

24 The petitioner had, without any justifiable excuse, failed to inform Latiff, over a period of two months, that Eurofibre had paid up the monies owed. From this, the most natural conclusion to draw that the petitioner had deliberately set out to keep Latiff in the dark as to the payment by Eurofibre.

25 Furthermore, the petitioner had signed 'Foo Chee Hock', the name of the then deputy registrar of the subordinate courts, on the writ that was faxed to Latiff. The petitioner explained that he had done so to show Latiff that Foo Chee Hock was the Deputy Registrar and that Foo Chee Hock would have signed it if the writ had been filed. This absurd explanation was rightly rejected by the trial judge and it must be fair to conclude that the petitioner had done so to deceive Latiff into thinking that the writ had already been filed to further conceal Eurofibre's payment from Latiff.

26 The trial judge was thus eminently correct in finding that the petitioner had set out to cover and conceal his receipt of the monies.

Petitioner had fabricated the bill of costs

27 The petitioner claimed costs in relation to advice rendered to Latiff on four matters. They were firstly on his claim against Eurofibre, secondly on his setting up a business in competition against Eurofibre, thirdly on a security matter and lastly on Eurofibre's claim against Junadei.

28 It is undisputed that the petitioner had advised Latiff in his claim against Eurofibre. However the petitioner had in his bill of costs charged Latiff for costs up to the stage of summary judgment. The petitioner could not have been entitled to such costs because, at the time the bill was to be sent out, Eurofibre had already paid up and the only costs that the petitioner would possibly be entitled to would be the already paid-up $700.

29 As for the petitioner's other claims, they were not supported by the evidence. Latiff denied receiving any such advice as well as denying ever informing the petitioner that he was authorised by Junadei to instruct him or instructing the petitioner to act for Junadei. As for Junadei, he denied ever giving any authority either actual or ostensible to the petitioner to act for him and had in fact never met or even spoken to the petitioner.

30 This fabrication on the part of the petitioner was clearly revealed by the transcript of the taped conversation. In the transcript, the petitioner had openly admitted that 'it's a mock bill' and

that it 'doesn't reflect the true picture actually' as 'its just to help me (the petitioner) only.'

31 As such, the trial judge had correctly found that the petitioner had fabricated the entire bill of costs and thus had dishonestly misappropriated the monies from his client's account.

Petition for revision

32 It is the duty of the appellate court to examine the evidence and come to an independent finding on each issue of fact. In comparison, the revisionary court should confine itself to errors of law or procedure only and should deal with questions of evidence or finding of facts only in exceptional circumstances to prevent a miscarriage of justice.

33 This was affirmed in *Akalu Ahir v Ramdeo Ram* AIR 1973 A 2145 where Dua J, delivering the judgment of the Supreme Court, stated:

> The High Court has been invested with this power (of revision) to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that the subordinate courts do not exceed their jurisdiction or abuse the power conferred on them by law. As a general rule, *this power, in spite of the wide language of (the equivalent sections) Cr P C, does not contemplate interference with the conclusions of fact in the absence of serious legal infirmity and failure of justice* [Emphasis added].

34 This was similarly stated by the court in *Ang Poh Chuan v PP* (1996) 1 SLR 326 that:

> While there cannot be a precise definition of what would constitute such serious injustice for that would in any event unduly circumscribe what must be a wide discretion vested in the court, generally it must be shown that there is *something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below*. [Emphasis added]

35 As such, having reviewed all the evidence, there was no reason to conclude that the trial judge had reached such a palpably wrong decision as to either law or fact as to constitute a serious injustice to the petitioner. In fact, I should say that the trial judge had throughout the trial gone out of her way to accommodate the petitioner.

Sentence

36 I next turn to the sentence imposed by the trial judge. In dealing with a conviction under s 409 of the Penal Code, it must be noted that cases under s 409 of the Penal Code are more serious than simple criminal breach of trust cases since under the situations envisioned by the provision, the offender was ex hypothesi standing in a fiduciary type relationship with the victim of the offence.

37 This was highlighted by Chan Sek Keong J (as he then was) in *Wong Kai Chuen Philip v PP* (1990) SLR 1011 that:

> criminal breach of trust by a lawyer in the discharge of his

> professional duty *must inevitably call for a custodial sentence of a deterrent nature*, not so much as to deter the offender concerned but to deter other members of his profession from committing similar offences. [Emphasis added]

38 Furthermore, there were other aggravating factors present in this case. The petitioner had betrayed the trust placed in him as an advocate and solicitor. He had then sought to conceal his receipt of monies from his client and, when found out, had even concocted documents to justify his actions. As such, I was of the view that the sentence imposed was manifestly inadequate.

Conclusion

39 Accordingly, the petition for revision was dismissed and the sentence imposed was increased to thirty-six months.

Petition for revision dismissed

Sgd:

YONG PUNG HOW

Chief Justice

Republic of Singapore