

Bachoo Mohan Singh v Public Prosecutor and another matter
[2010] SGHC 26

Case Number : Criminal Motions No 44 of 2009 and 45 of 2009
Decision Date : 20 January 2010
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Ang Cheng Hock SC (Allen & Gledhill LLP), Eugene Thuraisingam and Vinesh Winodan (Stamford Law Corporation) for Bachoo Mohan Singh; Jennifer Marie SC, Kan Shuk Weng and Peggy Pao, DPPs for the Public Prosecutor
Parties : Bachoo Mohan Singh — Public Prosecutor

Criminal procedure and sentencing – Criminal references

20 January 2010

Tay Yong Kwang J:

1 These two Criminal Motions have their genesis in Magistrate’s Appeal No. 134 of 2007 (“MA 134”) which was heard by me on 19 January 2009. In MA 134, Mr Bachoo Mohan Singh (“BMS”) appealed against his conviction and sentence pronounced by a district court. I dismissed his appeal against conviction but allowed his appeal against sentence by reducing the imprisonment term from 3 months to one month and adding on a fine of \$10,000 (which has since been paid). The grounds of my decision in MA 134 are reported in *Bachoo Mohan Singh v PP* [2009] 3 SLR 1037 (“the first High Court judgment”).

2 Following from my decision above, BMS filed Criminal Motion No. 5 of 2009 which was an application pursuant to s 60 of the Supreme Court of Judicature Act (“SCJA”) (Cap 322, 2007 Rev Ed) to reserve certain questions to the Court of Appeal. I heard and dismissed that Criminal Motion on 9 April 2009. The grounds of my decision are also in the first High Court judgment (from [77] to [82]).

3 On the same day (9 April 2009), BMS filed Criminal Motion No. 14 of 2009 and Criminal Appeal No. 6 of 2009 (see [83] to [86] of the first High Court judgment). These two matters went before the Court of Appeal on 27 August 2009. The Court of Appeal gave its decision on 4 December 2009 (see *Bachoo Mohan Singh v PP* [2009] SGCA 59). According to the prosecution (in its written submissions before me at [8] and [9]):

8 At the hearing of CA 6/2009 and CM 14/2009 on 27 August 2009 before the Court of Appeal, it was abundantly clear that the Court of Appeal was of the view that there were indeed some questions of law and even of public interest in the matter before them.

9 In the light of the procedural difficulties which BMS had to overcome, the concerns expressed by the Court of Appeal and the fact that a question was posed directly to the lead prosecutor that the Public Prosecutor should take up the cause, after the hearing was adjourned, the Public Prosecutor gave notice, on 28 August 2009, of his intent to apply before the Court of Appeal for an extension of time to apply to the High Court to file questions of law of public interest under s 60(1) SCJA (Criminal Motion No. 30/2009).

4 In the result, the Court of Appeal (by the majority decision of V K Rajah JA at [87] and Andrew Phang JA at [108], with Choo Han Teck J dissenting) allowed an extension of time for both the prosecution and BMS to apply to me in the High Court for leave to raise to the Court of Appeal questions pursuant to s 60 of the SCJA. The prosecution was given leave to file the questions that it had placed before the Court of Appeal while BMS was given "leave to file the following restated questions of law of public interest" (at [87]):

(a) Section 209 of the Penal Code (Cap 224, 1985 Rev Ed) makes it an offence for a person to (i) **dishonestly** (ii) **make** (iii) **before a court of justice** (iv) a **claim** which he (v) **knows** to be (vi) **false**. *What is the meaning of each of these words and the cumulative purport of this provision in the Singapore context?*

(*Observation:* The meaning of each of the words in bold needs to be interpreted in the context of the mischief that s 209 of the PC seeks to remedy. Accordingly, there are six questions of law arising from this section. Each of the words individually will not raise a question of public interest, but read together in constituting the offence of making a false claim under s 209 of the PC, they are collectively of public interest.)

(b) The following questions of law have arisen in relation to the role of the solicitor who files pleadings in a court:

(i) In what circumstances would a solicitor be held to have acted dishonestly (causing wrongful gain or wrongful loss, as defined in s 24 of the PC (Cap 224, 1985 Rev Ed) since if he obtains judgment for a client in an action for payment of a debt or for damages, it is bound to cause a loss to the defendant. When is the gain or loss wrongful or unlawful for this purpose?

(ii) In what circumstances is the offence committed: at the point of the filing of the statement of claim or defence in court?

(iii) Can a claim before a court ever be held as false if the defendant settles the claim in whole or in part before the claim is tried in court, or if the defendant submits to judgment to the whole or part of the claim?

(iv) In what circumstances ought a solicitor decline to accept and/or doubt his client's instructions before filing pleadings considering that a solicitor has no general duty imposed on him to verify his client's instructions?

(*Observation:* When s 209 is read with s 109 in its application to a solicitor, the public interest in the certainty of the law under s 209 is reinforced as it affects the role of the solicitor in acting for clients who seek to enforce their legal rights before a court of law.)

(All emphasis and italics are in the original report.)

5 In the present applications before me, BMS' Criminal Motion No. 44 of 2009 asks that the following questions of law be reserved for determination by the Court of Appeal:

(a) Section 209 of the Penal Code (Cap 224, 1985 Rev Ed) makes it an offence for a person to (i) **dishonestly** (ii) **make** (iii) **before a court of justice** (iv) a **claim** which he (v) **knows** to be (vi) **false**. What is the meaning of each of these words and the cumulative purport of this provision in the Singapore context?

(b) In what circumstances would a solicitor be held to have acted dishonestly (causing wrongful gain or wrongful loss, as defined in s 24 of the Penal Code (Cap 224, 1985 Rev Ed) since if he obtains judgment for a client in an action for payment of a debt or for damages, it is bound to cause a loss to the defendant. When is the gain or loss wrongful or unlawful for this purpose?

(c) In what circumstances is the offence committed: at the point of the filing of the statement of claim or defence in court?

(d) Can a claim before a court ever be held as false if the defendant settles the claim in whole or in part before the claim is tried in court, or if the defendant submits to judgment to the whole or part of the claim?

(e) In what circumstances ought a solicitor decline to accept and/or doubt his client's instructions before filing pleadings considering that a solicitor has no general duty imposed on him to verify his client's instructions?

It can be seen that these questions mirror those set out by the Court of Appeal in [\[4\]](#) above save for the Court of Appeal's observations and prefatory remarks.

6 The prosecution in its Criminal Motion No. 45 of 2009 sets out the following two questions of law for determination by the Court of Appeal:

Question 1

If an advocate and solicitor files a statement of claim in court on behalf of his client with the knowledge that the claim is based on facts which are false, and that his client was dishonest in making the false claim, does he commit an offence under section 209 read with section 109 of the Penal Code?

Question 2

If the answer to question 1 is in the affirmative, would he still have committed an offence if he was only acting on his client's instructions?

The decision of the court

7 The High Court "*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" (s 60(1) SCJA)(emphasis added). Section 60(5) provides that "any question of law which the Public Prosecutor applies to be reserved ... shall be deemed to be a question of public interest". The court therefore has no discretion where an application under s60 is taken out by the Public Prosecutor. Accordingly, I grant the order sought in Criminal Motion No. 45 of 2009.

8 Where Criminal Motion No. 44 of 2009 is concerned, bearing in mind the majority's views in the Court of Appeal and guided by their pronouncements, especially their observations at [87] of the judgment (set out in [\[4\]](#) above), I also grant the order sought in Criminal Motion No. 44 of 2009. I would add that whether or not the questions raised by BMS are reserved, they will have to be canvassed in the course of argument and will probably have to be dealt with by the Court of Appeal anyway. As acknowledged by the prosecution, there is some overlap between both parties' questions in any event.

9 The existing bail for BMS is extended until further order by the Court of Appeal.

10 The prosecution has been asked by me to draft a joint referral to the Court of Appeal setting out both parties' questions.

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