

Mah Kiat Seng v Public Prosecutor
[2010] SGHC 320

Case Number : Magistrate's Appeal No 184 of 2010 (DAC No 62538 and 62539 of 2009)
Decision Date : 28 October 2010
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Appellant in-person; Mohamed Faizal (Deputy Public Prosecutor) for the respondent.
Parties : Mah Kiat Seng — Public Prosecutor

Criminal Law

28 October 2010

Choo Han Teck J:

1 The appellant was taken to the Bedok Police Station on 17 July 2009 when he was arrested and charged for the offence of voluntarily causing grievous hurt, an offence under s 325 of the Penal Code (Cap 224, 2008 Rev Ed). When asked to have his finger impressions and photograph taken, he refused. He was thus charged under s 13(2)(a) of the Registration of Criminals Act (Cap 268, 1985 Rev Ed) ("the Act"). He also refused to provide a blood sample when requested to do so. For this he was charged under s 13E(5)(a) of the Act. The appellant was tried and at the end of the five-day trial he was convicted on both charges and was fined \$500 on each charge. The appellant appealed against the convictions but not on the sentences imposed.

2 At the appeal before me, DPP Mr Mohamed Faizal conceded that the conviction regarding the charge under s 13E(5)(a) cannot be sustained because certain procedure was not complied with. Under ss 13C(1) and (2) of the Act, if a person without good cause refuses to provide a blood sample, that person may be taken before a Magistrate who may then make an order for that person's blood to be taken. Such an order was, however, not obtained and so it could not be said that the appellant had been "lawfully required" to provide his blood sample. Section 13E(5)(a) of the Act was thus not applicable.

Sections 13C(1) and (2) of the Act provide as follows:

13C. — (1) No sample of blood shall be taken from a person who is arrested and accused of a crime unless the appropriate consent is given for the taking of the sample.

(2) If the appropriate consent required under subsection (1) for the taking of a sample of blood from a person is refused without good cause or cannot be obtained despite all reasonable efforts, that person may be taken before a Magistrate and the Magistrate may, if satisfied that there is reasonable cause to believe that the sample may confirm or disprove whether that person was involved in committing the crime, order that the person provide the sample required.

and Section 13E(5)(a) provides as follows:

(5) Where a person from whom a body sample is lawfully required under this Part refuses, without

reasonable excuse, to give the sample or to allow the sample to be taken from him, or otherwise hinders or obstructs the taking of the sample from him —

(a) that person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding one month or to both; ...

3 In respect of the appeal against the charge under s 13(2)(a) of the Act, the appellant (who was unrepresented) argued that he was told by the police officer at the station that he was being charged under the Registration of Criminals Act for refusing to have his finger impressions taken. He submitted that the Act did not apply to him because he was “not a criminal”. It is true that at the time of the offences under appeal the appellant was only a suspect. Furthermore, he was also acquitted at a separate trial in respect of the charge of voluntarily causing grievous hurt for which he was being investigated at the time. The appellant was also aggrieved that he was deceived by the investigating officer to report to the police station for the purpose of helping the police conduct their investigation when, in fact, he was “lured” there to be charged for voluntarily causing grievous hurt.

4 However, the appellant was wrong in submitting that the Act did not apply to him. Section 8(a) of the Act provides that:

8. Any authorised officer may —

(a) take or cause to be taken the finger impressions and photographs of any person under arrest who is accused of any crime;

5 The appellant had a long list of grounds of appeal in his written submissions. They consisted of complaints against the police officers and related to facts which were either not relevant to the charge or which this court, on appeal, was not in a position to overrule. I thus need to address the only one that needed clarification. The appellant submitted that the trial judge was wrong to have placed on him the burden of proving that he had provided his finger impressions. However, it was clear from the grounds of the trial judge’s decision that he had accepted the prosecution’s evidence and thus only the evidential burden shifted to the appellant initially. The trial judge did not place the legal burden on the appellant at the end of the trial. The learned judge had considered the evidence of the appellant and he was of the view that the evidence was not to be believed.

6 Accordingly, the appeal in respect of the charge under s 13(2)(a) of the Act was dismissed. For the reasons above, the appeal in respect of the charge under s 13E(5)(a) of the Act was allowed and the fine thereof ordered to be refunded to the appellant.

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