Public Prosecutor v Chew Suang Heng
[2001] SGHC 15

Case Number : MA 276/2000

Decision Date : 26 January 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Tan Boon Gin (Deputy Public Prosecutor) for the appellant; MN Swami (MN Swami & Yap) for the respondent

Parties : Public Prosecutor — Chew Suang Heng

Criminal Procedure and Sentencing – Sentencing – Corruption offences involving law enforcement officers – Need for deterrent custodial sentence -Whether plea of guilty, lack of premeditation and fear of being charged – Mitigating factors – Whether respondent's antecedents aggravating factor – s 6(b) Prevention of Corruption Act (Cap 241)

: The respondent, Chew Suang Heng (`Chew`) was charged in the District Court as follows:

> *DAC 42083/2000 (P1)*
>
> *You, Chew Suang Heng, M/58 yrs are charged that you on or about 26 August 2000, at Geylang Police Station, Singapore, did corruptly offer a gratification of a sum of $1000 (one thousand dollars) to one Jayasaravanan s/o Jayapragasam, a police constable in the employ of Singapore Police Force and attached to Geylang Police Station, as an inducement to do an act in relation to his principal`s affairs, to wit, to release you from detention for an offence of loitering for the purpose of illegal betting, and you have thereby committed an offence punishable under s 6(b) of the Prevention of Corruption Act (Cap 241).*

Section 6(b) of the Prevention of Corruption Act (Cap 241) (the `PCA`) provides as follows:

> *6 If -*
>
> *...*
>
> *(b) any person corruptly gives or agrees to give or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do any act in relation to his principal`s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal`s affairs or business; or*
>
> *...*
>
> *he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both.*

The facts

The facts set out in the prosecution`s statement of facts were admitted by Chew. On 26 August 2000 at about 8pm, while investigating a complaint of illegal horse-betting activities, Jayasaravanan S/O Jayapragasam (`Jayasaravanan`), a police constable attached to Geylang Police Station, and two Special Constables, Effendy bin Mohamed Rashid (`Effendy`) and Danker Clive Harrison (`Danker`), arrived at the vicinity of Block 3, Eunos Crescent. There were people gathering at the block.

Jayasaravanan noticed Chew holding a black pager in his right hand and constantly looking at it. Jayasaravanan then instructed Effendy and Danker to detain him. Chew threw away the black pager and started to run but was apprehended and handcuffed for loitering for the purpose of betting.

Chew was brought to Geylang Police Station in the police car. Jayasaravanan, Effendy and Danker were all in the police car with Chew. In the police car, Chew pleaded for leniency and asked to be let off. He told the police officers that he had over $3,000 with him and would give them $1,000 if they let him go. Jayasaravanan told Chew to keep quiet. When Chew insisted, Danker informed him that it was an offence to bribe police officers.

When the party had reached Geylang Police Station, the police officers brought Chew to their room. Chew asked Effendy to close the door and, when the door was closed, he took out a $1,000 note and placed it in front of Jayasaravanan. Jayasaravanan asked Chew to take the money back but he refused and pleaded to be released unconditionally. It was then that Jayasaravanan arrested Chew for trying to bribe him. The $1,000 note was seized and Chew was charged accordingly.

The decision below

Chew pleaded guilty to the charge and was sentenced to a fine of $6,000 and in default six months` imprisonment by district judge Seng Kwang Boon (the `judge`). The $1,000 `bribe money` was ordered to be forfeited. In sentencing Chew, the judge considered these factors:

(i) Chew had pleaded guilty to the offence;

(ii) Chew had no similar convictions previously although he had previous convictions for cheating and other offences;

(iii) the offence was not premeditated and Chew had committed the offence to avoid being charged for illegal punting, a relatively minor offence (he was in fact fined $2,000 for illegal punting);

(iv) the gratification offered was a small amount; and

(v) although Chew was trying to bribe a police officer, such acts would not succeed as our police officers are of the highest calibre.

The appeal

The prosecution appealed against the sentence imposed by the judge on Chew, contending that the sentence was manifestly inadequate in the circumstances of the case and that a deterrent custodial sentence ought to have been imposed on Chew.

In seeking a custodial sentence to be imposed on Chew, the prosecution contended, inter alia, that the judge had failed, in sentencing Chew, to adequately consider that Chew`s conduct was potentially highly prejudicial to the administration of criminal justice in Singapore as he had attempted to subvert the proper course of police investigations with his offer of a bribe to the police officer. I agreed with this submission. There is no doubt that attempting to bribe a law enforcement officer and interfering in the proper course of police investigations is a serious offence. Generally, corruption offences involving law enforcement officers or other public servants attract harsher penalties and custodial sentences as compared to similar offences committed in commercial dealings and in the private sector.

For corruption offences under the PCA which involve government servants, the norm is a custodial sentence and it is departed from where the facts are exceptional. For example, in **Meeran bin Mydin v PP** [1998] 2 SLR 522 , the appellant had pleaded guilty to two charges of bribing an immigration officer and was sentenced to nine months` imprisonment on each charge.

There is no doubt that an element of public interest exists in corruption offences involving the bribery of a public servant and that the courts have taken a stern view of such offences. In view of this public interest in stamping out bribery and corruption in the country, especially in the public service, a deterrent sentence for such offences is justified. The severity of the sentence imposed, however, would depend on the facts of each individual case.

In the present corruption offence, Chew had voluntarily offered the police officer a bribe without any solicitation. In such circumstances involving an attempt to bribe a law enforcement officer and undermine the administration of justice, I had no doubt that a custodial sentence was warranted. The aggravating and mitigating factors were then considered in determining the length of the custodial sentence.

Mitigating factors

In sentencing Chew, the judge had considered that his plea of guilt was a mitigating factor. In my view, however, in the circumstances of the case, Chew`s plea of guilt was of little mitigating value as the case against him was clearly made out. In pleading guilty, he must have known that the prosecution would have had no problem in securing a conviction in view of the evidence. The three police officers, Jayasaravanan, Effendy and Danker, were all in the police car with Chew when he first offered the gratification to them and they would all have been able to testify against him.

It is clear that not every plea of guilt by an offender should carry weight as a mitigating factor. In **Wong Kai Chuen Philip v PP** [1990] SLR 1011 (Unreported) Chan Sek Keong J commented at [1990] SLR 1011, 1014; [1991] 1 MLJ 321, 322-323:

> *... the voluntary surrender by an offender and a plea of guilty by him in court are factors that can be taken into account in mitigation as they may be evidence of remorse and a willingness to accept punishment for his wrongdoing. However, I think that their relevance and weight to be placed on them must depend on the circumstances of each case. I do not see any mitigation value in a robber surrendering to the police after he is surrounded and has no means of escape, or much mitigation value in a professional man turning himself in in the face of absolute knowledge that the game is up.*

Further, in **Fu Foo Tong & Ors v PP** [1995] 1 SLR 448 at p 455, Karthigesu JA said:

> *... It is not axiomatic that every plea of guilt `entitles`, as it was contended by counsel to a discount of between one-quarter to one-third of what might otherwise be considered an appropriate sentence after a trial. A plea of guilt can be of no mitigating value, for example, when the evidence overwhemingly supports a conviction.*

In sentencing Chew, the judge also considered the fact that the offence was not premeditated and that Chew had committed the offence to avoid being charged for illegal punting, a relatively minor offence. However, in my view, the judge had omitted to consider and address the fact that Chew had repeatedly attempted, despite being warned against it, to bribe the police officer into releasing him from custody.

In corruption offences, givers who act in a moment of fear to avoid a minor transgression of the law would not be treated with the same severity as acceptors who in most situations would be motivated by greed. However, this did not help Chew in this case. Although he might have been desperate at first to avoid being charged for illegal punting, his fear and desperation were not an excuse for him to stubbornly persist in trying to bribe the police officer even after he had been warned several times. In my view, the judge should not have considered Chew`s lack of premeditation and fear of being charged as a mitigating factor in this case.

Further, the judge considered that there was no adverse consequence of Chew`s act by stating that, although Chew was trying to bribe a police officer, such acts would not succeed as our police officers were of the highest calibre. The judge appeared to have given Chew credit for the high moral calibre of the police officers when none was due. Although Chew`s attempt to bribe the police officer did not succeed, the fact remained that such an attempt was carried out with a mind to subvert the course of justice. There was no reason why Chew should be given credit for the refusal of the police officer to accept the bribe. Therefore, the fact that there were no actual consequences of Chew`s act should also not be a mitigating factor in this case.

As for Chew`s record of previous offences, the prosecution submitted that the judge had failed to attach due weight to Chew`s antecedents, especially his previous conviction for an offence of cheating. To my mind, however, it was clear that none of Chew`s antecedents (which included, inter alia, using a forged document, cheating and possession of counterfeit currency) had any bearing to the present offence of corruption for which he was being charged and this fact was not an aggravating factor in sentencing Chew. This was in line with the principle enunciated by the Court of Appeal in **Roslan bin Abdul Rahman v PP** [1999] 2 SLR 211 . In that case, the appellant pleaded guilty in the High Court to the charge of robbery causing death under s 394 read with s 397 of the Penal Code (Cap 224) and the trial judge took into account the appellant`s previous drug-related antecedents during sentencing. It was held by the Court of Appeal that the appellant`s drug-related antecedents should have no bearing on the present trial as they were completely unrelated to the offence with which the appellant was charged.

Conclusion

In conclusion, I found no reason why a deterrent custodial sentence should not be imposed on Chew. There were no exceptional circumstances in this case and, on the facts, I allowed the appeal and sentenced Chew to two months` imprisonment in addition to the fine of $6,000 imposed by the judge. The forfeiture of the $1,000, offered to the police officer, as ordered by the judge remained.

Outcome:

Appeal allowed.