

Mah Kiat Seng v Public Prosecutor
[2011] SGHC 47

Case Number : Criminal Motion No 42 of 2010
Decision Date : 01 March 2011
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Applicant in-person; Mohamed Faizal (Deputy Public Prosecutor) for the respondent.
Parties : Mah Kiat Seng — Public Prosecutor

Criminal Law

1 March 2011

Choo Han Teck J:

1 This was an application by the applicant to reserve questions of law to the Court of Appeal. It arose from an appeal by the applicant in respect of his conviction on two charges under the Registration of Criminals Act (Cap 268, 1985 Rev Ed). One charge was preferred under s 13E(5)(a) for refusing to provide a blood sample. The other was under s 13(2)(a) to have his finger impressions and photograph taken. I allowed the appeal in respect of the first and dismissed the other. The facts and my grounds of decision of those appeals are set out in *Mah Kiat Seng v Public Prosecutor* [2010] SGHC 320.

2 The relevant facts of this application concerned his refusal to give his finger impressions to the police after he was arrested on suspicion of having committed an offence of causing grievous hurt. He was not subsequently charged for the offence under investigation but was charged for the offences under the Registration of Criminals Act (Cap 268, 1985 Rev Ed) when he declined to comply with the requests by the police. So far as the charge relating to the refusal to provide his blood sample was concerned, I allowed the appeal when the Public Prosecutor conceded that the express procedure was not followed in that the applicant was not produced before a Magistrate for a determination that the blood sample would be necessary.

3 In respect of the second charge, the only relevant point of law here and in the appeal previously, was whether the applicant was obliged in law to have his finger impressions and photograph taken.

4 In this application the applicant recited 22 questions of law for reference to the Court of Appeal under s 60 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed). In this regard, the questions were rambling, repetitious and many concerned not questions of law but fact. Since the applicant is now, as was in the appeal hearing, unrepresented by counsel, it would be helpful to summarise the nature of his complaint. There were two aspects. The first was factual – whether the police had made the request for him to provide his finger impressions and photograph. The trial judge found that they had. The appellant was dissatisfied with the trial judge’s decision and on it, he (the appellant) enunciated a long list of questions which he claims to be questions of law of public interest.

5 Although s 60(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) admits of more than one question of law to be reserved for the determination of the Court of Appeal (by reason of the rule of interpretation that the singular includes the plural), it must be applied with care and as far as possible, the question of law must be expressed as a single question without also setting out ancillary and underlying questions that might be asked in the course of answering the question so reserved. The real question of law was whether the Registration of Criminals Act (Cap 268, 1985 Rev Ed) applied to compel a suspect as opposed to a convicted criminal. This was the issue in the appeal and I was of the view that it did. Section 8(a) of the Act is unequivocal and provides as follows

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; ...

The section making an offence of any refusal to comply with a request under s 8 is also unequivocal –

13(2)Where a person to whom subsection (1) applies refuses, without reasonable excuse, to submit to the taking of his photograph or finger impressions or to provide any registrable particulars or other particulars when lawfully required by an authorised officer or by an officer in charge of a prison —

(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; ...

6 “Any person under arrest” would include a suspect who had been arrested. There is no question therefore to say that ss 8 and 13 do not apply to a suspect. Accordingly, there was no basis to reserve the questions to the Court of Appeal for its determination. The application was thus dismissed.

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