Public Prosecutor *v* Raub bin Saat
[2010] SGHC 292

Case Number : Magistrate's Appeal No 439 of 2009 (OAS No 173 of 2009)

Decision Date : 04 October 2010

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Han Ming Kuang (Deputy Public Prosecutor) for the appellant; Udeh Kumar s/o Sethuraju (S K Kumar & Associates) for the respondent.

Parties : Public Prosecutor — Raub bin Saat

Criminal Law

4 October 2010

Choo Han Teck J:

1 The respondent was adjudged a bankrupt on 4 October 1991. In early 1998 one Abdul Wahab placed an advertisement to sell his Housing Development Board ("HDB") flat at Simei Street 4. A housing agent called Mr Abdul Wahab and introduced the respondent as an interested purchaser. Subsequently, the respondent agreed to buy the flat but not through the agent. Although the HDB valuation was $270,000, the respondent agreed to buy the flat for $320,000.

2 The Insolvency & Public Trustee's Office ("IPTO") was notified by the HDB by letter of 13 March 1998 that the respondent had applied to buy the flat. The IPTO file appeared to have no record of what action IPTO took. It appeared that the letter was filed and no action taken.

3 Subsequently, when the respondent was required to make the initial $47,000 he had to defer because he did not bring the money. But that time the respondent and the seller became better acquainted and had met socially. The respondent again did not bring the money at the second appointment and a third appointment was arranged by the HDB. In the interim Abdul Wahab had rejected an offer by his wife's friend to buy the flat for $300,000.

4 The respondent again failed to bring the $47,000 at the third appointment. He asked Abdul Wahab to borrow money for him, saying that he would repay him when his (respondent's) family sold their house at Kew Avenue. The respondent brought his mother along and she too assured Abdul Wahab that payment will be made.

5 Abdul Wahab then borrowed $47,000 from his friends and family and on 1 December 1998 Abdul Wahab and the respondent signed a loan agreement for $50,000 which $47,000 was used to effect payment to HDB on the respondent's behalf. On 1 January 1999 the respondent and his wife became joint owner of the flat after Abdul Wahab was paid (except for the $50,000 loan). The respondent did not at any time inform Abdul Wahab that he was an undischarged bankrupt.

6 Eventually, Abdul Wahab sued and obtained a judgment for $49,500 and subsequently complained to IPTO. The letter of complaint was dated 15 May 2003, but IPTO appeared to have overlooked this letter and nothing was done for three years until Abdul Wahab complained again in July 2006. This time IPTO decided to charge the respondent for obtaining credit without disclosing

that he was a bankrupt, an offence under s 141(1)(a) of the Bankruptcy Act (Ch 20).

7 The respondent and his mother testified that they had told Abdul Wahab that the respondent was a bankrupt. The trial judge compared their evidence with the sole prosecution witness on this point – Abdul Wahab – and concluded that he was a truthful and reliable witness. He was less convinced by the respondent's testimony on this point and found that the respondent did not inform Abdul Wahab that he was a bankrupt.

8 However, the trial judge found that s 133 of the Bankruptcy Act (Ch 20) applied, and the respondent, in failing to disclose his bankruptcy had no intent to defraud or conceal the state of his affairs –

> **Defence of innocent intention**
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> In the case of an offence under any provision of this Part, other than sections 135(*e*), 137, 140(2), 142, 143 and 145, a person shall not be guilty of the offence if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

The trial judge found on the evidence that the initial discussion to purchase the flat was devoid of any intention to defraud. He traced the subsequent history through the evidence and concluded that he could not find any intention to defraud. He observed that towards the end it was Abdul Wahab who was the more anxious party to raise the $47,000 for the respondent. He observed that genuine efforts were made by the respondent and his family to repay the loan. He noted that the failure to pay was due to unfortunate events in that the house he had offered as security was repossessed by the bank. The trial judge found that it was the respondent himself who wanted the $50,000 loan to be documented with family members from both sides witnessing it. It seemed clear that there was no intention to defraud. Was there a concealment of his state of affairs? It is clear that the mere failure on the part of a bankrupt to disclose his bankruptcy is not concealment. In this case, the HDB had from the outset informed IPTO when the purchase application was made.

9 The crucial issue was whether, in those circumstances, the respondent had the intention to defraud or conceal his state of affairs. That was entirely a question of fact, and it appeared from the trial judge's reasoning and findings, that the respondent had proven to the court's satisfaction that he did not have the intent to defraud or conceal the state of affairs from Abdul Wahab. I would only add that given the evidence that the HDB had informed IPTO of the proposed purchase by the bankrupt, there could be some doubt as to whether the respondent did or did not inform Abdul Wahab that he was a bankrupt. That, in the event, was not crucial as the trial judge found that the respondent had no intention to defraud or to conceal the state of his affairs. The learned DPP submitted that on the evidence the trial judge ought not to have found that the respondent did not act with a fraudulent intent and had not concealed the state of affairs. Given the way the trial judge assessed each and every aspect of the evidence in order to come to the findings that he did, I am of the view that his findings of fact should not be disturbed. The appeal was therefore dismissed.