

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 30

Magistrate's Appeal No 11 of 2019

Between

Public Prosecutor

... Appellant

And

Liew Yong Liang

... Respondent

GROUND OF DECISION

[Criminal Law] — [Statutory offences] — [Environmental Public Health Act
(Cap 95, 2002 Rev Ed)]

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Public Prosecutor

v

Liew Yong Liang

[2020] SGHC 30

High Court — Magistrate's Appeal No 11 of 2019

Chua Lee Ming J

31 January 2020

12 February 2020

Chua Lee Ming J:

Introduction

1 This was an appeal by the Prosecution against the decision of a Magistrate's Court acquitting the respondent, Mr Liew Yong Liang, of a charge under s 82(1)(a) punishable under s 103 of the Environmental Public Health Act (Cap 95, 2002 Rev Ed) ("EPHA"). The charge alleged that the respondent:

... did hinder NEA authorised officers, namely Enforcement Officers Rajendran s/o Ramaswamy and Liew Heng Theng Valmond, in the performance and execution of their duties, to wit, [the Respondent] refused to provide [his] personal particulars upon their lawful request, and caused undue delay to the enforcement action ...

2 I allowed the appeal, set aside the acquittal, convicted the respondent on the charge and ordered him to pay a fine of \$1,000 (in default, five days' imprisonment).

Facts

3 For the purposes of the present appeal, the salient facts were as follows. On 19 April 2018, Mr Rajendran s/o Ramaswamy (“Rajendran”) and Mr Liew Heng Theng Valmond (“Liew”), two officers from the National Environment Agency (“NEA”), were on enforcement duty in the vicinity of Northpoint City, a shopping mall in Yishun, Singapore.

4 Rajendran observed the respondent throwing a cigarette butt on the floor at the loading and unloading bay and stamping on it with his right foot to extinguish it. Rajendran then followed the respondent to Golden Village Yishun (“GV”), which was across the road from Northpoint City. The respondent, who was on shift as a Foodpanda rider at the time, collected a food order from a stall in GV for delivery and proceeded to the exit. Rajendran stopped the respondent at the lobby, showed his authorisation card, identified himself as an NEA officer and informed the respondent that the respondent had committed a littering offence. At the trial, the respondent claimed that Rajendran did not show his authorisation card. However, the District Judge (“DJ”) who heard the trial found that Rajendran had shown his authorisation card to the respondent.

5 The respondent denied littering. Rajendran then asked the respondent to provide his particulars, which he refused to do. Rajendran called the police at around 6.10pm. While Rajendran and the respondent were waiting for the police to arrive, a group of persons in Foodpanda uniforms arrived at the scene at about 6.15pm. One of them, Mr Phua Jian Zhi (“Phua”), asked Rajendran for proof of his identity. Rajendran did not show Phua his authorisation card because he was not required to show it to third parties.

6 At about 6.30pm, Senior Staff Sergeant Rossdeli bin Kasman and

Sergeant Teo Keng Hui (“Sgt Teo”) arrived at the scene. Rajendran informed the police officers of what had happened.

7 Sgt Teo spoke to the respondent who claimed that Rajendran had not shown him any authorisation card. Sgt Teo confirmed that Rajendran was an NEA officer. The respondent gave his particulars to Sgt Teo, but still refused to give his particulars to Rajendran. Sgt Teo did not give the respondent’s particulars to Rajendran because she took the position that she could not do so unless the respondent consented. The respondent eventually gave his particulars to Rajendran at about 7.10pm.

Whether the offence under s 82 EPHA was made out

8 Section 82 EPHA states as follows:

82.—(1) No person shall at any time —

(a) hinder, obstruct or delay ... any authorised officer ... in the performance and execution of his duty or of anything which he is ... empowered, employed or required to do by virtue or in consequence of or under this Act; or

...

(2) However, it is not an offence under subsection (1) for any person to refuse to comply with any request, demand or order made or given by any authorised officer ... who fails to declare his office and refuses to produce his identification card on demand being made by that person.

...

9 As stated earlier, the DJ found that Rajendran did identify himself as an NEA officer and that he did show the respondent his authorisation card. I saw no reason to disturb the DJ’s finding of fact. Section 82(2) EPHA therefore did not help the respondent.

10 The charge against the respondent alleged that he had hindered the NEA officers in the performance and execution of their duties by refusing to provide his personal particulars upon their lawful request and had caused undue delay to the enforcement action.

11 It was undisputed that the NEA officers were “authorised persons” for the purposes of s 82 EPHA. The three issues that arose were as follows:

- (a) whether the NEA officers were lawfully entitled to ask the respondent for his personal particulars;
- (b) whether the respondent’s refusal to comply with the request for his personal particulars hindered the NEA officers’ performance and execution of their duties by causing undue delay to the enforcement action; and
- (c) whether the respondent had the necessary *mens rea* to hinder the NEA officers.

Whether the NEA officers were lawfully entitled to ask the respondent for his personal particulars

12 The Prosecution relied on s 21 of the EPHA, which provides as follows:

21.—(1) Any person who commits an offence under section 17, 18, 19 or 20 may be arrested without warrant by any ... authorised officer, and taken before a Magistrate’s Court ...

(2) Notwithstanding subsection (1) or any other written law, any ... authorised officer who, having effected an arrest in accordance with this section, is satisfied as to the identity, name and place of residence of the person arrested, may, instead of taking that person before a Court or to a police station, serve upon that person a notice ... requiring the person to attend at the Court described at the hour and on the date specified in the notice.

(3) For the purpose of satisfying himself as to the identity of the person arrested, the ... authorised officer may require the person to furnish such evidence of identity as he may consider necessary.

...

13 The present case involved littering in a public place, which is an offence under s 17(1)(a) of the EPHA. Section 21 EPHA was therefore engaged. Again, there was no dispute that the NEA officers were “authorised persons” and were entitled to ask the respondent for his personal particulars under s 21 EPHA.

14 However, the DJ concluded that:

(a) when Rajendran first approached the respondent, the NEA officers “were merely engaging the [respondent] to elicit his voluntary co-operation”;¹ and

(b) the NEA officers “were at this point not relying on the formal procedure laid set [*sic*] out in sections 21(1) and 21(2)”.²

15 The reasons for the DJ’s conclusion that the NEA officers were not relying on s 21 were not altogether clear from his grounds of decision (“GD”). Be that as it may, in my view, the evidence did not support the DJ’s conclusion. Rajendran informed the respondent that he had committed an offence of littering and requested his particulars. Rajendran also told the respondent that he needed the respondent’s particulars because he was going to issue a “littering ticket”. The NEA officers’ actions were consistent with reliance on s 21 EPHA.

16 Under s 21(3) EPHA, the power to require the respondent to give his personal particulars was exercisable only if the respondent had been arrested. There was some suggestion in the GD that the DJ was of the view that the NEA officers had not, at that point, placed the respondent under arrest. However, in

my view, the evidence also did not support the DJ's view that the respondent had not been placed under arrest.

17 I agreed with the Prosecution's submission that a person is considered to be arrested if he is compelled to accompany the officer effecting the arrest; the word "arrest" need not be used and neither is there any need to physically restrain the person: *Zainal bin Kuning v Chan Sin Mian Michael* [1996] 2 SLR(R) 858 at [43].

18 In this case, Rajendran had instructed the respondent not to "run away" as the NEA officers required his particulars.³ The respondent testified that he "did not try to flee the scene",⁴ returned the food order that he was supposed to deliver⁵ and complied with the NEA officers' instruction to await the arrival of the police.⁶ He also testified that the NEA officers:

- (a) were following him and did not want to let him go;⁷
- (b) were trying to stop him from moving around;⁸ and
- (c) were following him to make sure he was not out of their sight.⁹

19 In my view, the evidence established that the NEA officers had placed the respondent under arrest. Pursuant to s 21(3) EPHA, they therefore had the power to ask the respondent for his particulars, so that they could satisfy themselves as to the respondent's identity.

20 The Prosecution's alternative case was that the NEA officers were empowered by s 86(1) EPHA to ask for the respondent's personal particulars.

21 Section 86(1) EPHA provides as follows:

86.—(1) Any person who is charged by any ... authorised officer with any offence under this Act shall on demand give his name and address and other proof of identity to the ... authorised officer, if so required.

22 The Prosecution submitted that the term “charged” in s 86(1) EPHA refers to an allegation that an offence has been committed and not to a formal charge in Court. I agreed. In my view, all that is required for the purposes of s 86(1) is that the accused is informed that he has committed an offence under the Act. Section 86(1) is a general provision that empowers a police officer or an authorised officer to demand that a person who has committed an offence under the Act furnishes his particulars, so that enforcement action can be taken.

23 However, it seemed strange that the Prosecution was seeking to rely on s 86(1) to prove the offence charged, which was an offence under s 82(1)(a). The failure to comply with a demand made under s 86(1) is itself an offence under s 86(3). In any event, I did not have to decide whether the Prosecution could rely on s 86(1) to prove an offence under s 82(1)(a) because, in my view, it was not necessary for the Prosecution to do so. The offence in the charge was under s 82(1)(a), which is for hindering, obstructing or delaying any authorised officer’s performance and execution of his duty or of anything which he is empowered, employed or required to do by virtue or in consequence of or under the EPHA. In addition to proving that the NEA officers had the power to demand the respondent’s particulars, the Prosecution had to prove that the respondent’s refusal to comply with the demand hindered the NEA officers’ performance and execution of their duties. In this case, the charge against the respondent alleged that the respondent had hindered the NEA officers by causing undue delay in the enforcement action. This was a clear reference to the issuance of a notice to attend Court under s 21(2). However, to exercise the power to issue a notice to attend Court under s 21(2), the NEA officers had to

have effected an arrest. Yet if an arrest had been effected, the Prosecution need not have relied on s 86(1) since the NEA officers would already have had the power to ask for the respondent's particulars under s 21(3).

Whether the respondent's refusal hindered the NEA officers

24 The DJ accepted the Prosecution's definition of "hinder":¹⁰

To 'hinder' means to cause some appreciable interference with the performance of the officer's duty. If the officer is frustrated in his attempt to perform his duty or retarded in the execution thereof, then clearly, he has been hindered. A hindrance which is or may be surmounted, is no less of a hindrance.

25 The Prosecution's definition was based on *Foo Siang Wah Frederick v Public Prosecutor* [1999] 1 SLR(R) 996 ("*Frederick Foo*") at [44]–[45]. That case concerned s 26(b) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed), which made it an offence for anyone to assault, obstruct, hinder or delay any authorised officer in the execution of any duty imposed or power conferred by the Act. I agreed with the Prosecution's definition of "hinder".

26 In the present case, the respondent's refusal to provide his particulars prevented the NEA officers from satisfying themselves as to the respondent's identity. This meant that they could not serve the respondent with a notice to attend Court instead of taking him before a Court or to a police station, which they were empowered to do pursuant to s 21(2). The NEA officers wanted to issue a notice to attend Court; this was the more efficient option for the NEA officers. The respondent's refusal to comply with their request for his particulars prevented them from doing so until at least an hour later, after the police arrived and intervened. The respondent's conduct therefore hindered the NEA officers in the performance and execution of their duties by causing undue delay to their intended enforcement action. The fact that the NEA officers could have

overcome the hindrance by taking the respondent before a Court or to a police station was irrelevant.

Whether the respondent had the mens rea to hinder

27 The DJ referred to *Frederick Foo* and held that the offence under s 82(1)(a) EPHA was not one of strict liability and that *mens rea* was required.¹¹ I agreed.

28 The DJ concluded that the respondent did not have the requisite *mens rea* to hinder the NEA officers in the performance of their duties. The DJ reasoned that the respondent had declined to provide his particulars to the NEA officers because he was given a choice as to whether to give his particulars or to be brought before a Court.¹²

29 In my view, the evidence did not support the DJ's conclusion. The respondent's own evidence was that he had refused to give his particulars to the NEA officers because they did not show their authorisation cards. His refusal was not due to an exercise of a choice between giving his particulars or being brought before a Court. As stated earlier at [4], the DJ found that Rajendran had identified himself as an NEA officer and had produced his authorisation card. The respondent therefore had no reason not to give his particulars.

30 In his GD, the DJ also referred to Sgt Teo's evidence that she had told the respondent that it was "his choice whether he [wanted] to give the particulars, if he [did] not want to give, then it will become a Court case".¹³ Regardless of whether the respondent understood Sgt Teo's statement to mean he had such a choice, the fact remained that, before the police arrived, the respondent had already refused to give his particulars to the NEA officers and that refusal had nothing to do with the exercise of any choice between giving

his particulars or being brought before a Court. The respondent had already committed the offence under s 82(1)(a) EPHA before the police arrived.

Conclusion

31 For the above reasons, I set aside the acquittal. I convicted the respondent on the charge and imposed a fine of \$1,000 (in default, five days' imprisonment).

Chua Lee Ming
Judge

Charis Low (Attorney-General's Chambers) for the appellant;
The respondent in person.

- 1 GD at [28].
- 2 GD at [32].
- 3 Record of Appeal ("ROA") at p 30, lines 20 – 22.
- 4 ROA at p 183, line 5; p 194, line 19.
- 5 ROA at p 164, lines 15 – 20; p 197, line 31 to p 198, line 20.
- 6 ROA at p 165, lines 22 – 24.
- 7 ROA at p 198, lines 6 – 12.
- 8 ROA at p 199, lines 24 – 26.
- 9 ROA at p 199, lines 28 – 29.
- 10 GD at [23].
- 11 GD at [24].
- 12 GD at [50].
- 13 GD at [17].