# Yap Keng Ho v Public Prosecutor
# [2006] SGHC 201

**Case Number** : Cr M 29/2006

**Decision Date** : 08 November 2006

**Tribunal/Court** : High Court

**Coram** : Choo Han Teck J

**Counsel Name(s)** : Applicant in person; Jennifer Marie and Han Ming Kuang (Deputy Public Prosecutors) for the respondent

**Parties** : Yap Keng Ho — Public Prosecutor

*Criminal Procedure and Sentencing – Revision of proceedings – Witness remaining in court before testifying while other witnesses giving evidence at applicant's criminal trial – Trial judge refusing to "abort" trial on account of witness' presence in court – Applicant filing criminal motion in High Court for order of "mistrial" even though trial not concluded – Whether application premature – When witness may remain in court before testimony given*

8 November 2006

**Choo Han Teck J:**

1 The applicant was charged with two others (collectively referred to as "the accused persons") under s 19(1)(*a*) of the Public Entertainments and Meetings Act, (Cap 257, 2001 Rev Ed) for carrying out public entertainment without a licence. The trial commenced on 25 October 2006 before a District Court judge. On 27 October 2006, the applicant filed this criminal motion for an order declaring a "mistrial". The application also made three other claims, namely, that: (a) there had been a violation of Arts 9 (1)–9(3), 12 and 14 of the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution"); (b) the Attorney-General had misled the court and violated Arts 9 and 12 of the Constitution; and (c) the "State Council" should be directed to advise the President of Singapore to "convene a Constitutional Court under Article 100 of the Constitution".

2 The factual basis of this application arose from the presence of the investigating officer for the case, one Assistant Superintendent of Police Jeremy Koh ("the investigating officer"), in court during the recording of the oral evidence of three witnesses. The first witness ("PW1") gave evidence of the receipt of the first information report, the second ("PW2") produced three photographs taken at the scene, and the third ("PW3") produced a sketch plan of the scene. The accused persons applied to the trial judge to "abort" the trial on account of the investigating officer's presence in court. The application was dismissed on 27 October 2006 and, consequently, the applicant filed this application. The trial was thus adjourned pending the hearing of this application. The application came up for hearing before me on 30 October 2006.

3 The main ground for making this application was set out in the applicant's affidavit filed on 30 October 2006. In it, the applicant complained that the investigating officer had been "sitting in the court from the outset of the trial and throughout the entire hearing on 25 October 2006". He also complained that the deputy public prosecutor ("the DPP") had misled the court by not obtaining the court's approval for the investigating officer to sit in during the trial. He deposed that the investigating officer "was passing up and down the court in arranging the witnesses in order to assist the DPP". The applicant also alleged that PW3's presence in court whilst the investigating officer was on the stand was an irregularity.

4 The applicant was not represented before me although his previous counsel, one Mr M Ravi,

appeared to assist him in court. The DPP pointed out that Mr Ravi had been suspended from practising as an advocate and solicitor the previous Friday. As the proceedings before me did not include an investigation into Mr Ravi's conduct or role in court, I accepted the applicant's statement that Mr Ravi was not assisting him (the applicant) as counsel, and that Mr Ravi's role was limited to helping him record notes of the proceedings. In his oral argument, the applicant submitted that the charges against him and the other accused persons were politically motivated. He asserted the claim, though not so stated on oath in his affidavit, that the trial judge had guided the witness in his testimony, implying that the judge was biased against the accused persons. He also submitted that the sketch plan produced by PW3 was "flawed". Finally, he argued that the testimonies of the prosecution witnesses were untruthful. These were the only arguments that pertained to the application brought by way of this criminal motion. The applicant spent a long time making a speech of a political nature. Interspersed in his rhetoric were pleas for justice and adherence to the rule of law.

5 "Justice" and "the rule of law" are commonly espoused values and most people have a superficial idea of what they connote. But these are also complex subjects and learned jurists have struggled at times to determine their application in more difficult situations. Without the assistance of counsel, the applicant was unable to articulate the relevance of these grand ideals to the case at hand. However, from what had been stated in his application, supporting affidavit, and oral arguments, it seemed that his claim that justice was not done related to the presence of the investigating officer and, subsequently, PW3, in court and to the trial judge's refusal to "abort" the trial when that was brought to the judge's attention. That being all there was, the allegations of the breach of the rule of law, and the failure of justice, were misconceived. Before I set out to explain why that was so, I should first refer to the facts relating to the presence of the investigating officer in court. Witnesses are, as a general rule, required to remain outside the courtroom before they had given their evidence: see, generally, Jeffrey Pinsler, *Evidence, Advocacy and the Litigation Process* (LexisNexis, 2nd Ed, 2003) at p 460. However, the court has the discretion to make exceptions. In criminal proceedings, it is not uncommon for an investigating officer to remain in court even *before* his evidence is recorded if he is needed to assist the prosecutor, and if there has been no objection from the Defence. If there are reasons to object, the judge will have to determine if the objection is valid, and if not, he or she will be entitled to overrule the objection. In most cases, there will be no objection from the Defence, especially during the testimonies of those who were not eyewitnesses, for example, photographers and persons who draw up sketch plans. In this case, the objection was made fairly late in so far as PW1, PW2 and PW3 were concerned because it appeared that the Defence was not aware of the officer's presence when these witnesses were giving oral evidence. Nothing was said as to whether the DPP had given a positive indication that the said officer would not be called as a witness such as to mislead the applicant into believing that there was no basis to object. There was also nothing in the affidavit or in the applicant's oral argument that indicated why the presence of the investigating officer during the testimonies of the three witnesses was prejudicial to the Defence. As for the applicant's description of how the investigating officer was "passing up and down the court arranging the witnesses for the DPP", that seemed to me to be little more than part of the routine functions of an investigating officer in a criminal prosecution.

6 I will now refer to the dictates of justice and the rule of law in the context of the applicant's case. The term "justice" sometimes connotes desert, and sometimes, fairness, and, sometimes, some vague intuitive notion of what was right in the circumstances. In the present case, the applicant's complaint of injustice was really directed against the trial judge's refusal to "abort" the trial. Trial judges do not "abort" the trials which they are trying. If there has been any wrong done which the judge has the power to correct, then he must do his duty accordingly. If any party to those proceedings is dissatisfied with the ruling or direction that the judge so made, then the proper recourse should be for that party to reserve his objections until an appeal is brought against the final decision of the judge. It would be inappropriate and, in many instances, wrong, for a party to seek

recourse to a higher court before judgment has been handed down. This is because the judge might ultimately agree with counsel in his submission, and rule in that party's favour. This is precisely the situation here. The Prosecution had not closed its case and the judge had not ruled as to whether there was a case for the Defence to answer. In these inchoate circumstances, there was no basis upon which I could determine what the nature and extent of the injustice was. Justice and its mirror image, injustice, are often determined by the consequences or imminent consequences of the act in question, and the interests of all parties must also be taken into account. Where a conflict of the respective interests arises such that one might have to accommodate or give way to another, the judge will have to decide which takes precedence. There was nothing imminently fatal to the applicant's case at the point when this motion was filed. If the trial judge were to subsequently find that the facts were in the applicant's favour or discharge and acquit him, the presence of the investigating officer in the courtroom would not have occasioned any injustice to the applicant. The applicant's complaint about the presence of the investigating officer was one that a judge is routinely expected to deal with. Among other such matters would be decisions relating to the admissibility of evidence.

7 The rule of law operates within the framework of the legal system and that, in turn, is built not only around the institutions of law but also the laws. One of the merits of the rule of law is the uniformity and predictability of the law which is essential for people to know what it is that they can or cannot do in that society. The procedure for trial and the rules of evidence are among matters over which the trial judge has full control. He makes all the rulings and decisions that arise in the course of the trial such as he thinks will help him conduct the proceedings rightly and justly, and, ultimately, to help him arrive at the verdict. Where a party is dissatisfied with the verdict, he may resort, by way of the appeal process, to bringing his case before a superior court. The High Court's revisionary jurisdiction over a subordinate court's proceedings is one way through which matters that do not normally fall within the appeal process might nevertheless be brought before the High Court. Where the appeal process is available, as is the case here, the High Court's revisionary jurisdiction should not liberally be invoked. The filing of a criminal motion certainly cannot be used to interrupt a trial each time a party is unhappy with any ruling that the trial judge makes in the course of a trial. A trial judge would have to make numerous rulings in the course of a trial; each ruling would be adverse to one if not the other party, and sometimes to both. The trial will be constantly interrupted if every ruling is challenged before the trial has ended. The flow and dignity of a trial interrupted in such fashion tarnishes the image of the rule of law. There may, of course, be exceptions to any law; otherwise, equity would have no role in shaping justice in areas where the law is inadequate. The question then is: did the applicant's case fall within any exception? He made no reference to any exceptional circumstances. And I found nothing exceptional in his – apart from the applicant's attempt to disrupt the trial at the incipient stage for the reason that the investigating officer was present in court when three witnesses were giving their evidence.

8 Finally, justice and the rule of law require that only relevant issues are addressed. The issue raised by the applicant in this motion was the alleged wrongful refusal by the trial judge to "abort" the trial. It was a straightforward point that, for reasons above, I am of the view had no merit in law. This application did not have any greater or special significance because the applicant alleged that the case against him was "politically motivated". The motives of any party in presenting or defending a case generally have no relevance unless it was made so by reason of the pleadings, as in the case of civil proceedings. In criminal cases, only the motives of the accused and the complainant might become an issue at the trial, but that is a matter for the trial judge to decide. Political motives and manoeuvres have no relevance no matter which party was involved – whether the party who initiated the proceedings or the party wishing to disrupt it. The court is only concerned with the legal issues and no more.

9 For the reasons above, the application was dismissed.