

Public Prosecutor v Donohue Enilia
[2004] SGHC 248

Case Number : MA 119/2004

Decision Date : 05 November 2004

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Benjamin Yim (Deputy Public Prosecutor) for appellant; Respondent in person

Parties : Public Prosecutor — Donohue Enilia

Criminal Procedure and Sentencing – Appeal – Appeal to High Court against trial judge's refusal to grant compensation order – Whether High Court having jurisdiction to hear appeal – Section 256(d) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Charge – Alteration – Appeal to High Court against trial judge's refusal to grant compensation order – Whether High Court having power to amend charge – Section 256(d) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Compensation and costs – Whether aggravating factors relevant in determining grant and quantum of compensation

Criminal Procedure and Sentencing – Compensation and costs – Whether compensation order should be granted by High Court – Factors to consider – Section 401(1)(b) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

5 November 2004

Yong Pung How CJ:

1 The respondent pleaded guilty in the Magistrate's Court to one charge of employing a foreign worker without a valid work permit under s 5(1) of the Employment of Foreign Workers Act (Cap 91A, 1997 Rev Ed) ("EFWA") and one charge of failing to comply with the conditions of a work permit under s 22(1) of the EFWA. The respondent was convicted and sentenced to pay 35 months of levy at the rate of \$345 per month for the first charge and a fine of \$3,000 for the second charge. On an application by the Public Prosecutor for an order of compensation for the foreign worker's unpaid salaries under s 401(1)(b) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC"), the trial judge declined to make such an order. The Prosecution appealed.

2 At the start of the hearing, the Prosecution informed me that the respondent had agreed to make full payment of the maid's unpaid salaries amounting to \$3,580. Nevertheless, the Prosecution wished to continue with the appeal for a definitive decision on the order of compensation. After hearing the Prosecution's arguments, I allowed the appeal and granted an order of compensation. I now give my reasons.

The facts

3 The charges against the respondent are set out below:

(a) MOM Summons No 677 of 2004:

You Enilia Donohue (F) (03/01/1975)

(NRIC S7540756D)

of 521 WOODLANDS DR 14 #06-329 Singapore 730521

are charged that you, from on or about 01 December 2001 to 9 Aug 2003 at 521 Woodlands Drive 14 #06-329 Singapore 730521 did employ a foreigner, namely, Achdaniah (PPT No. AD008097) when a work permit in respect of the said foreigner allowing the said foreigner to work for you had not been obtained and you have thereby committed an offence under section 5(1) of the Employment of Foreign Workers Act, Chapter 91A and punishable under section 5(6) of the same.

(b) MOM Summons No 678 of 2004:

You Enilia Donohue (F) (03/01/1975)

(NRIC S7540756D)

of 521 WOODLANDS DR 14 #06-329 Singapore 730521

are charged that you, from on or about 01 December 2001 to 9 Aug 2003 at 521 Woodlands Drive 14 #06-329 Singapore 730521 did fail to comply with the condition of the Work Permit No. 0 0356021 – which was issued to Achdaniah (PPT No. AD008097) to work as a Domestic Worker for you, to wit, you had failed to pay the said foreigner the salary you declared in the Work Permit Application Form dated 5 Sep 2001 and you have thereby committed an offence under section 22(1)(a) of the Employment of Foreign Workers Act, Chapter 91A and punishable under section 22(1) of the same.

4 On 7 September 2001, a work permit was granted for an Indonesian female to work for the respondent as a domestic maid. The respondent subsequently defaulted on the payment of the maid levy to the Ministry of Manpower ("the Ministry"), resulting in the Ministry revoking the maid's work permit on 1 December 2001. Instead of repatriating the maid and paying her all moneys and salaries due to her before the repatriation as required by conditions 3 and 5 of the work permit, the respondent continued to employ the maid for a further one year and eight months despite knowing that the work permit had been revoked.

5 During her employment with the respondent from 7 September 2001 to 9 August 2003, the maid was never paid her salaries which totalled \$4,630. After the maid ceased to work for the respondent and shortly before her plea of guilt, the respondent ultimately made good a sum of \$1,050 to the maid. There was a balance of \$3,580 still outstanding.

6 The maid eventually reported the respondent to the police on 9 August 2003, leading to the discovery of the respondent's contravention of the EFWA. The respondent subsequently pleaded guilty to a charge under s 5(1) of the EFWA for employing a foreign worker without a valid work permit and to a charge under s 22(1)(a) of the EFWA for failing to comply with the condition of the work permit to pay the foreign worker a salary.

7 The trial judge held that aggravating factors in the case merited sentences above the benchmarks for both offences. He convicted the respondent on both charges and sentenced her to pay 35 months of levy at the rate of \$345 per month for the first charge, and a fine of \$3,000 for the second charge.

The Prosecution's case

8 The Prosecution cited several aggravating factors for the trial judge's consideration in deciding whether to grant an order of compensation. The respondent had retained the maid in employment despite knowing that the work permit had been revoked. Further, according to the Prosecution, the respondent had kept the maid in the dark about the revocation. If the maid had not reported the respondent to the police for the unpaid salaries on 9 August 2003, the respondent would have simply continued to flout the law. Finally, the respondent's irresponsible behaviour also resulted in the maid being classified as an overstayer. The Prosecution thus sought a compensation order on the basis of these aggravating factors.

The decision below

9 The trial judge rejected the Prosecution's arguments. First, he held that it was wrong of the Prosecution to cite the aggravating factors in support of the application for a compensation order as they were more appropriate for decisions as to sentencing. Second, he found that there was a high likelihood that the maid knew about the illegal employment and thus did not deserve to be compensated. Third, he held that the Prosecution had failed to give a satisfactory explanation of how the sum of \$3,580 sought in the application for a compensation order was derived. Consequently, he refused the Prosecution's application to make a compensation order under s 401(1)(b) of the CPC for the unpaid salaries owed by the respondent.

Preliminary issue of jurisdiction

10 Before dealing with the appeal proper, a preliminary issue raised by the Prosecution must first be dealt with. This was whether the High Court could, under s 256 of the CPC, hear an appeal relating to the granting of a compensation order and vary the order accordingly. In particular, could the High Court hear an appeal against the refusal by the trial judge to grant a compensation order?

11 Section 256 of the CPC provides that:

At the hearing of the appeal the court may, if it considers there is no sufficient ground for interfering, dismiss the appeal or may —

- (a) in an appeal from an order of acquittal, reverse the order and direct that further inquiry shall be made or that the accused shall be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;
- (b) in an appeal from a conviction —
 - (i) reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction or committed for trial;
 - (ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or enhance the sentence; or
 - (iii) with or without the reduction or enhancement and with or without altering the finding, alter the nature of the sentence;
- (c) in an appeal as to sentence, reduce or *enhance the sentence*, or alter the nature of the sentence; or
- (d) in an appeal from *any other order*, alter or reverse the order.

[emphasis added]

12 The authorities seem to suggest that no appeal can lie against a compensation order as it does not form part of the sentence under s 256(c) of the CPC. In *PP v Lee Meow Sim Jenny* [1993] 3 SLR 885, Karthigesu JA held at 893, [28] that:

[A] compensation order under [s 401(1)(b) of the CPC] is not part of the 'sentence' and consequently the High Court would not have the power under s 256 to make such an order. In our opinion, a compensation order is not 'punishment' for an offence under the Penal Code.

13 In *Lim Poh Eng v PP* [1999] 2 SLR 116, after referring to the above passage in *PP v Lee Meow Sim Jenny*, I stated at [45] that:

Since a compensation order is not regarded as part of the 'sentence', the High Court does not have the power under s 256(b) or (c) to vary a compensation order. A compensation order could conceivably be varied under s 256(d) in 'an appeal from any other order'. That section was however unavailable since the appeal was only with regards to conviction and sentence.

14 A common thread running through these two authorities is that the appeals involved had been against sentence or both conviction and sentence, to which ss 256(b) and 256(c) of the CPC applied. Framed this way, the appellate court, strictly speaking, could not "enhance the sentence" by making or varying a compensation order, simply because such an order did not form part of the sentence. However, I made the observation in *Lim Poh Eng v PP* that a compensation order could conceivably be varied under s 256(d) "in an appeal from any other order". I only stopped short of varying the compensation order because the appeal in *Lim Poh Eng v PP* had only been with regards to conviction and sentence and s 256(d) therefore did not apply. Therefore, it is clear that where an appeal lies against a compensation order made by the lower court, such an appeal can be heard by the High Court and the order accordingly maintained or varied.

15 The only problem in this appeal was that the trial judge had made no compensation order at all. Strictly speaking, there was no existing compensation order from which the Prosecution could appeal. In other words, it was technically not "an appeal from any other order" under s 256(d) of the CPC. Nevertheless, I was of the view that there could be an appeal against the court's refusal to grant a compensation order. The opposite conclusion would be absurd, for it would mean that an appeal would be possible if the court awarded a manifestly inadequate amount of compensation, but no appeal would be possible if the court refused to grant any compensation. It cannot be Parliament's intention for the High Court's appellate powers to be so circumscribed.

The appeal

16 The Prosecution appealed against the trial judge's refusal to grant the compensation order under s 401(1)(b) of the CPC on the following grounds:

- (i) that the trial judge erred in law and in fact in failing to grant a compensation order for the period from 7 September 2001 to 1 December 2001, during which the victim received no salary, notwithstanding the existence of a valid work permit;
- (ii) that the trial judge erred in law and fact in failing to grant a compensation order for the period from 1 December 2001 to 9 August 2003, during which the victim received no salary after the revocation of her valid work permit;

(iii) that the trial judge erred in law by holding that the aggravating circumstances in this case cited by the Prosecution only applied to sentencing and were not relevant in support of an application under s 401(1)(b) of the CPC;

(iv) that the trial judge erred in law and fact in finding that this was not a case where the amount of compensation could be readily and easily ascertained; and

(v) that the trial judge erred in failing to give sufficient weight to the strong public policy arguments that would favour the making of a compensation order in cases such as this.

17 I will first examine the nature of a compensation order and the principles relating to the award of compensation before addressing the above arguments.

Nature of a compensation order

18 Section 401(1)(b) of the CPC gives the court wide powers to order a convicted person to pay compensation to "any person or to the representatives of any person injured in respect of his person, character or property by the crime or offence for which the sentence is passed".

19 A compensation order allows compensation to be recovered where a civil suit is an inadequate remedy due to the impecuniosity of the person injured. The Court of Criminal Appeal in *PP v Lee Meow Sim Jenny* cited the following proposition from *R v Inwood* (1974) 60 Cr App R 70 at 73:

Compensation orders were not introduced into our law to enable the convicted to buy themselves out of the penalties for crime. Compensation orders were introduced into our law as a convenient and rapid means of avoiding the expense of resort to civil litigation when the criminal clearly has means which would enable the compensation to be paid.

Principles relating to the award of compensation

20 There are several principles relevant for the purposes of deciding whether a compensation order should be granted.

21 Firstly, a compensation order does not form part of the sentence (*PP v Lee Meow Sim Jenny; Lim Poh Eng v PP*), nor is it an alternative to a sentence (*R v Miller* [1976] Crim LR 694). Therefore, it should not be used as further punishment of a convicted person, and the amount of compensation ordered should not exceed the amount of damage caused: *Emperor v Maung Thin* (1909) 10 Cr LJ 78.

22 Secondly, there must be a causal connection between the offence of which the accused is convicted and the personal injury, loss or damage in respect of which the compensation order is made: *R v Deary* (1993) 14 Cr App R (S) 648. In other words, the court may make a compensation order only in respect of the injury or loss which results from the offence for which the accused is convicted. The court should adopt a broad common-sense approach in assessing whether compensation should be awarded. It should not allow itself to be enmeshed in refined questions of causation which may arise in claims for damages under contract law or tort law: *per* McCullough J in *Bond v Chief Constable of Kent* [1983] 1 All ER 456. In the present appeal, the requisite nexus was made out. The maid's financial loss was occasioned by the failure of the respondent to pay all salaries due to her, thereby breaching condition 5 of the employer's conditions (where employer undertakes to "pay [his/her] foreign worker all salaries due to him") in the work permit application form and s 22(1) (a) of the EFWA.

23 Thirdly, compensation will be ordered only in clear cases where the damage is either proved or agreed: *R v Vivian* [1979] 1 All ER 48. The assessment of loss or damage must be based on evidence and not simply on representations by the Prosecution: *R v Horsham Justices, ex parte Richards* [1985] 2 All ER 1114.

24 Fourthly, it was established in *R v Daly* (1973) 58 Cr App R 333 that the power to make compensation orders should only be used for dealing with claims in straightforward cases. Compensation orders are designed for cases where the amount of compensation can be readily and easily ascertained, and are not for cases where the amount of damages or loss is notoriously disputed: *R v Donovan* (1981) 3 Cr App R (S) 192. Although the court can hear evidence in order to determine questions as to the fact or quantum of loss, the court should not embark on any complicated investigation: *R v Briscoe* (1994) 15 Cr App R (S) 699. Indeed, an order should only be made where the legal position is quite clear: *R v Miller*. The court should decline to make a compensation order unless it is based on very simply stated propositions which have been agreed on or which are simple to resolve: *Hyde v Emery* (1984) 6 Cr App R (S) 206.

25 The present case was one in which the quantum of compensation could be readily computed. Since the compensation was for unpaid salaries due to the maid, the computation should be the number of months of employment multiplied by the monthly salary, less salaries already paid. The Prosecution stated in the skeletal arguments that the maid was to have been paid \$10 for the first three months and \$230 for the next twenty months. Shortly before her plea, the respondent made two quick payments amounting to \$1,050 in the hope of mitigating her guilt. This left the net salaries due and payable to the maid to be \$3,580. The computations are as follows:

Monthly salary	Number of months (relevant period)	\$
\$10	3 (7 September 2001 – 30 November 2001)	30
\$230	20 (1 December 2001 – 9 August 2003)	<u>4,600</u>
		4,630
Less: Salaries already paid so far		<u>(1,050)</u>
Net salaries due		<u>3,580</u>

26 Fifthly, the order must not be oppressive, but must be realistic in that the court must be satisfied that the accused either has the means available, or will have the means, to pay the compensation within a reasonable time (*R v Parker* (1981) 3 Cr App R (S) 278). In the present appeal, judging by the fact that the respondent was able to make full payment of her fines totalling \$15,075, she was likely to be a person with the means to pay the compensation sought.

27 It is now appropriate to examine whether the trial judge's exercise of discretion to refuse a compensation order was justified.

Whether a compensation order should have been granted

28 The Prosecution submitted that the trial judge erred in law and in fact in failing to grant a compensation order for the entire period of employment. In submitting that a compensation order should also be granted for the period from 7 September 2001 to 30 November 2001 where there had been a valid work permit, the Prosecution also applied to amend the charge in which this period of employment had been omitted. For this issue, I had to first examine the question whether the High Court is empowered to amend a charge in an appeal against a refusal by the Magistrate's Court to grant a compensation order. Secondly, I had to consider if there are any principles governing the exercise of discretion in granting compensation orders, and to bear the principles in mind when deciding whether a compensation order should have been granted for the whole period of employment of the maid in the circumstances.

Amendment of charge

29 The Prosecution pointed out that the charge MOM 678 of 2004 pertaining to s 22(1) of the EFWA had mistakenly omitted the maid's first period of employment between 7 September 2001 to 30 November 2001, where there had been a valid work permit. The Prosecution thus applied to this court to amend the charge under s 256 of the CPC to include the said period so that the relevant period for this charge would read from 7 September 2001 to 9 August 2003.

30 Section 256 of the CPC sets out the powers of an appellate court in hearing appeals against acquittal, conviction, sentence or any other order. It is established law that with regards to appeals from conviction, the High Court has the power under s 256(b) to amend a charge and consequently convict an accused person on the amended charge: *Annis bin Abdullah v PP* [2004] 2 SLR 93; *Er Joo Nguang v PP* [2000] 2 SLR 645; *Garmaz s/o Pakhar v PP* [1996] 1 SLR 401 ("*Garmaz*"). However, it has been laid down in *Ng Ee v PP* [1941] 1 MLJ 180 and *PP v Koon Seng Construction Pte Ltd* [1996] 1 SLR 573 that several safeguards must be rigorously observed: First, the power to amend a charge under s 256(b) is not unlimited and has to be exercised with great caution and not to the prejudice of the accused person; second, the amendment must also not affect the substance of the evidence from both the Prosecution and the Defence.

31 The issue to be examined in the present case is whether the High Court can exercise its powers under s 256 to amend a charge in an appeal against "any other order" in s 256(d). In particular, can the High Court exercise its powers to amend a charge in an appeal against a refusal by the Magistrate's Court to grant an order of compensation?

32 Although *Garmaz* related to an appeal against conviction, the following passage is instructive in showing that our courts have adopted a liberal construction of s 256. The Court of Appeal in *Garmaz* held at 412, [28] that:

If a literal and strict construction is adopted, it is clear that the High Court has no such power. However, such a construction would lead to incongruous results: on the one hand the court by that section is given extensive powers in respect of conviction, sentence and findings, and yet on the other it has no power to amend the charge, and the consequence of this is that it has no power even to correct any errors appearing in the charge. Such a position is untenable. Further, the High Court has the revisionary powers under ss 266–268 of the CPC. In view of these extensive express powers, *it is inconceivable that it was the intention of the legislature that the High Court, in the exercise of its appellate jurisdiction, should not have the power to amend the charge preferred against the accused and set the record straight. A more purposive construction should in our view be adopted.* [emphasis added]

33 In *PP v Annamalai Pillai Jayanthi* [1998] 2 SLR 165, the High Court held that it had the power under s 256(a) to amend a charge on an appeal against an acquittal, so long as no prejudice was suffered by the accused person as a result. There would not be any prejudice if the Prosecution would have led substantially the same evidence on the amended charge. In that case, I observed at [18] that:

In *Garmaz* ... the Court of Appeal held that the High Court, in the exercise of its appellate jurisdiction, possessed the implied power to amend a charge when exercising its powers on an appeal from a conviction pursuant to s 256(b) of the [CPC]. *A fortiori, the High Court is empowered to amend a charge while exercising its powers under s 256(a) of the same Code, on appeals from orders of acquittal.* The only limiting factor in each case is the prejudice, if any, suffered by a defendant. In the present case, there was none. *The prosecution would have led substantially the same evidence on a charge of abetment in the commission of an offence under s 5(1) of the EFWA.* [emphasis added]

34 In *PP v R Sekhar s/o R G Van* [2003] 2 SLR 456, relying on the authority of the Court of Appeal's decision in *Garmaz*, I also exercised powers under s 256 to amend a charge on appeal against an acquittal as opposed to an appeal against conviction. The accused person was then convicted on the amended charge and sentenced accordingly.

35 In my view, this court also has the power under s 256(d) of the CPC to amend a charge relating to an appeal against a refusal to grant a compensation order. However, such an amendment should only be made where the safeguards set out in *PP v Koon Seng Construction Pte Ltd* and *Ng Ee v PP* are observed. In the present case, the amendment sought did not bring in any new charges and was only a correction of the period of employment of the maid during which she received no salary. Such an amendment did not affect the substance of the evidence led by Prosecution and did not prejudice the respondent in any way. I therefore allowed the amendment.

36 I shall now deal with the principles governing the exercise of discretion in the granting of compensation orders.

The exercise of discretion

37 Section 401(1)(b) of the CPC provides that "[t]he court ... may, in its discretion, make ... an order for ... compensation". It is evident that this provision confers a discretion on the trial judge to grant compensation orders.

38 There is, however, a dearth of authorities providing guidance as to the exercise of the discretion by the trial judge to order compensation and the role of the appellate court in handling appeals concerning the exercise of such discretion. Apart from a recent judicial pronouncement in *Ho Yean Theng Jill v PP* [2004] 1 SLR 254, there is very little jurisprudence developed in this area. In *Ho Yean Theng Jill v PP*, I stated at [37] that:

A trial judge is always entitled to consider whether the discretion should be exercised to make a compensation order under s 401(1)(b) of the CPC. ... [I]f persons in the position of the appellant are truly remorseful and genuinely sincere about their offers to compensate their domestic maids for the injuries, there is nothing to prevent a trial judge from ordering a compensation order under s 401(1)(b) of the CPC if the facts of the case warrant it. ... If the accused person is subsequently found guilty of the offence, the compensation order may be made in addition to the punishment to be meted out. *I reiterate that the trial judge should make a compensation order in addition to the punishment to be meted out only in appropriate cases where the facts and*

circumstances of the case warrant it. [emphasis added]

39 As regards general principles relating to when the appellate court will interfere with an exercise of discretion by a trial judge, I have also made pronouncements elsewhere on this issue. Although these are culled from authorities that do not deal with compensation orders, they are nevertheless highly relevant for the purposes of this appeal. As to the discretion of a judge to grant or withhold consent to composition, I expressed the view in *PP v Norzian bin Bintat* [1995] 3 SLR 462 at 474, [52] that:

[T]hat discretion is a judicial discretion and therefore one which must be exercised not only in accordance with the rules of reason and justice but also in accordance with the provisions of the law.

40 In *Kee Leong Bee v PP* [1999] 3 SLR 190 at [21], which was cited in *Ho Yean Theng Jill v PP* at [40] and *Chua Tian Bok Timothy v PP* [2004] SGHC 208 at [8], I also held, in relation to the judge's discretion to refuse or allow composition, that:

Where an order involves a discretion of the court, the appellate court will not interfere with the exercise of the discretion unless it was exercised on demonstrably wrong principles or without any grounds, or if the judge had ignored some relevant provision of law; see *Lim Seng Gin v R* [1956] MLJ 76 and *R v Lim Kian Soo* [1950] MLJ 181.

41 In summary, it is indisputable that where the matter involves the trial judge exercising his discretion, this discretion must be judicially exercised and there must be grounds for its exercise, for a discretion exercised on no grounds cannot be judicial: *per* Lord Sterndale MR in *Ritter v Godfrey* [1920] 2 KB 47 (which I had cited in *Ho Yean Theng Jill v PP* at [41]).

Whether a compensation order should have been granted for the period when the maid had worked with a valid work permit

4 2 From 7 September 2001 to 30 November 2001, there had been granted a valid work permit which allowed the maid to work for the respondent. However, the maid was paid no salary at all during this period.

43 The Prosecution had, in the proceedings below, applied to the trial judge for a compensation order covering the whole period of employment from 7 September 2001 to 9 August 2003. The trial judge had refused to grant the order entirely as he took objection to the later stage of employment (1 December 2001 to 9 August 2003) when the work permit had been revoked. In any event, the trial judge could not have granted the order for the period from 7 September 2001 to 30 November 2001 as this period had been omitted from the charge. As mentioned earlier, I have allowed the amendment of the charge to include the said period.

44 There seems to be no reason why the maid should not be given compensation for her services during the period of 7 September 2001 to 30 November 2001. She had worked for the respondent under a valid work permit and ought to be remunerated for her services. I note that the trial judge had said in his grounds of decision ([2004] SGMC 9) at [8] that:

Had this case been a straightforward one solely under section 22(1)(a) for failing to pay the maid her salary and in breach of the conditions of a *valid* work permit, I would have been more forthcoming in making a compensation order for the unpaid salaries. [emphasis in original]

45 The victim was clearly entitled to compensation at least for her first period of employment from 7 September 2001 to 30 November 2001 during which she had worked under a valid work permit. I would accordingly grant an order of compensation for this period.

Whether the trial judge should have ordered compensation for the period when the maid had worked without a valid work permit

46 This was the more problematic issue on appeal. During the period between 1 December 2001 and 9 August 2003 where the maid had been in the respondent's employment without a valid work permit, the trial judge had refused to grant a compensation order on the basis that the maid was an "accomplice" in the illegal employment. He held that by granting the order he would then be seen to be "condoning her action in the whole illegal venture". Indeed, the trial judge had said in his grounds of decision at [8] that:

[T]he compensation order that I was asked to make pertained to unpaid salaries that included the period when the maid's work permit was revoked. In other words, the unpaid salaries included the period when the maid was classified as a illegal immigrant or overstayer ...

47 In order to determine whether a compensation order should have been granted for the period during which the maid had worked without a valid work permit, it is important to first ascertain the purpose such an order aims to achieve. It is already well-established law that a compensation order is not part of the sentence, nor is it a form of punishment for an offence (*PP v Lee Meow Sim Jenny*). The objective of granting a compensation order is to recompense victims of crime for their injuries or losses suffered. It may act as a token of remorse on the accused's behalf, but it is not targeted at punishing the accused, nor is it an enhancement of the sentence imposed upon him. The focus is on redressing the victim's loss in a justifiable manner.

48 The next question then is whether an order should be made to recompense the maid for her unpaid salaries, given the fact that these salaries had stemmed, for the period between 1 December 2001 to 9 August 2003, from an illegal employment due to her work permit having been revoked. In the few cases where compensation orders have been granted, the facts leading up to the grant of a compensation order have been straightforward. For instance, in *Lim Poh Eng v PP*, the district judge had granted a compensation order upon the conviction of the accused for causing grievous hurt by an act which endangered the life or personal safety of others under s 338 of the Penal Code (Cap 224, 1985 Rev Ed). There was no question of whether the victim's right to the compensation had been tainted by any fault of her own. The court did not have to engage in a balancing exercise to decide if the victim was deserving of compensation.

49 The trial judge laid great emphasis on the issue of illegality when deciding whether or not to grant the order. The trial judge said that as the maid had been fully aware of the revocation of her work permit, and yet colluded with her employer to continue working without a valid permit, her involvement in the illegal employment tainted her right to compensation under s 401(1)(b) of the CPC.

50 The trial judge had, in particular, expressed the following concerns at [8]:

Strictly speaking, in light of the facts of the case, the maid may not be a "person ... injured in respect of his person, character or property by the crime or offence" but a *potential accomplice* of the accused, as far as the section 5(1) offence is concerned. *Although the prosecution sought to downplay the maid's role by making a bare statement in the submission that the maid was kept in the dark about her work permit being revoked, I was not prepared to accept this fact conclusively in the absence of other supporting facts. This was telling from the Statements of*

Facts, both of which were conspicuously silent on the point that the maid was kept in the dark.
[emphasis added]

He further added, at [10]:

There is a strong and lingering possibility that the maid may also be an accomplice to the entire venture. If I were to grant her the unpaid salaries for the period that she was not on a valid work permit, I could be seen as condoning her action in the whole illegal venture. In addition, there was indication from the accused that she had paid some money privately to the maid. In fact, the prosecution conceded that some payment was made to the maid, in the sum of \$1,050. *This part payment to the maid does lend support to the lingering possibility that the maid may be in the know all along and decided to go along with her employer.* It was true that she went to the police subsequently but this did not detract from any possible initial collusion with the accused. [emphasis added]

51 With respect, I found that the trial judge had exercised his discretion improperly. His reason for refusing to grant an order of compensation was the alleged participation of the maid in the illegal employment. On closer examination of the record of proceedings, it was evident that no evidence was adduced at trial to show that the maid had continued to work for the respondent despite knowing that her work permit had been revoked. The Statement of Facts displayed nothing to suggest that the maid was an accomplice of the respondent to her illegal employment. The Notes of Evidence also indicated that the trial judge did not clarify with the Prosecution at the hearing whether the maid was aware of the revocation of her work permit at any point in time during her employment with the respondent.

52 The trial judge had opined that the fact that the respondent had paid some money (\$1,050) privately to the maid "lent support to the possibility that the maid may be in the know all along and decided to go along with the employer". In the absence of supporting facts, all this was mere speculation. There was no basis for the trial judge not to grant the order since there was no evidence to support his suspicion that the maid had been complicit in the illegal employment.

53 In the light of the above circumstances, I allowed the appeal and granted an order for compensation for the period in which the maid had worked without a valid work permit.

Public policy considerations

54 In reaching the above decision, I took into account the existence of strong public policy considerations in this area.

55 Our courts have taken an uncompromising stance against errant employers who exploit and abuse their foreign domestic maids. Emphasis has consistently been placed on the strong element of public interest involved when a foreign domestic maid is hurt or abused: *PP v Chong Siew Chin* [2002] 1 SLR 117. There have been various pronouncements in case law reiterating that foreign domestic maids have to be protected and cared for during their employment in Singapore in order that our nation evolves to become a more gracious society: *Ho Yean Theng Jill v PP*; *Ong Ting Ting v PP* [2004] 4 SLR 53. Sufficient weight must therefore be given to the public policy arguments that would favour the making of a compensation order for the victim's unpaid salaries.

56 In *Farida Begam d/o Mohd Artham v PP* [2001] 4 SLR 610 ("*Farida*"), I elaborated on why added protection must be afforded to foreign maids in view of their special circumstances, at [26] to [27]:

During the parliamentary debate on the Penal Code (Amendment) Bill on 20 April 1998, the Minister for Home Affairs listed the reasons for the enhanced penalties:

- (1) Maids are especially vulnerable to abuse by their employers because they 'work within the confines of their employers' home for 24 hours of the day ... are isolated from the rest of society ... and depend on their employer for food and lodging'.
- (2) Maid abuse should not be tolerated in a gracious society, which is what Singapore aspires to be.
- (3) Maid abuse is also detrimental to Singapore's international reputation and bilateral relations.

Section 73 was passed in response to an alarming increase in maid abuse cases from 1994 to 1997. Maid abusers have certain misconceptions which must be corrected. A maid sells her services; she does not sell her person. An employer should not exploit his maid's dependence on him for food and lodging, for these are basic rights. A maid's abased social status does not mean that she is any less of a human being and any less protected by the law.

57 Although *Farida* was a maid abuse case, the vulnerability of maids is not limited to physical abuse, but extends to financial exploitation by errant employers who default on the payment of their salaries. Maids stand in a position of vulnerability *vis-à-vis* their employers. Because of their often impecunious status, even if maids are owed salaries by their employers, it is understandable if most would be cowed into continuing to work for the employer for fear of being repatriated and in view of the prospect of being paid at some point in the future.

58 The maid in the present appeal earned \$230 per month. Yet she was not paid at all for her services rendered. In such circumstances, she would not be likely to have the financial capability to pursue a civil claim against the respondent for her unpaid salaries. Further, the case was not one where the maid had from the outset entered into a conspiracy with the respondent to work for her in the absence of a valid work permit. There was a valid permit granted on 7 September 2001, which was revoked on 1 December 2001 through the irresponsible act of the respondent in defaulting on the maid levy. There was no evidence that the respondent and the maid had deliberately entered into an agreement to continue with the maid's employment despite being aware of the revocation of the work permit.

59 I agreed with the Prosecution's submissions that there was a need to send a strong signal that non-payment of salaries in breach of work permit conditions would be viewed upon seriously by the courts and that a stern sentence awaits employers who persist in circumventing the regulations of the Ministry.

Whether aggravating factors are relevant in deciding on a compensation order

60 The Prosecution had cited several aggravating circumstances of the case in support of its application for a compensation order under s 401(1)(b) of the CPC. The trial judge felt that the Prosecution seemed to conflate the principles relating to sentencing and those of the making of compensation orders. He held that the aggravating factors only applied to sentencing.

61 I agreed with the trial judge that it was inappropriate for the Prosecution to cite these aggravating factors in support of an application for a compensation order. As mentioned earlier, a compensation order is not punishment for an offence nor part of the sentence imposed for the

offence (*PP v Lee Meow Sim Jenny*). The aggravating factors cited by the Prosecution in support of the application for a compensation order were more appropriately addressed in sentencing. As a compensation order was not aimed at castigating the accused but at providing redress to the victim of crime, such aggravating factors were not relevant in determining the quantum of the compensation. In deciding whether to make or refuse the order, one should apply the principles relating to the grant of a compensation order listed above in [20] to [26]. In particular, one should look to the victim to see if the injury or loss suffered did flow from the offence of which the accused was convicted.

Conclusion

62 For the foregoing reasons, I allowed the appeal and made an order of compensation for the sum of \$3,580 for the whole period of employment from 7 September 2001 to 9 August 2003.

Appeal allowed.

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