

Public Prosecutor v Loo Kun Long
[2002] SGHC 235

Case Number : CR No 13 of 2002
Decision Date : 11 October 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Hui Choon Kuen (Deputy Public Prosecutor) for the petitioner; Respondent in person
Parties : —

Criminal Procedure and Sentencing – Sentencing – Interpretation of phrase "shall be liable...to a fine of \$1,000" in s 30(2)(a) Films Act (Cap 107, 1998 Rev Ed) – Whether a minimum fine of \$1,000 must be imposed

Statutory Interpretation – Construction of statute – Purposive approach – Use of relevant debates in Parliament – Interpretation Act (Cap 1, 1997 Rev Ed) s 9A(1), (2)(b), (3)(d)

Statutory Interpretation – Interpretation act – Interaction of sections – Interaction of ss 9A(1) and 41 Interpretation Act – Precedence of s 9A(1) Interpretation Act (Cap 1, 1997 Rev Ed)

Judgment

GROUNDS OF DECISION

Introduction

This was a petition by the public prosecutor for the criminal revision of the decision of district judge See Kee Oon in MAC 4000/02. The accused, Loo Kun Long ('Loo'), pleaded guilty to the charge of knowingly being in possession of three obscene films, contrary to s 30(2)(a) of the Films Act (Cap 107, 1998 ed) ('the Act'). The district judge convicted Loo of that charge and imposed on him a fine of \$500 per film, i.e. \$1,500 or 15 days imprisonment in default. Loo was also convicted and sentenced on two other charges, but those charges were irrelevant for the purposes of this criminal revision.

2 The only issue before me was whether the fine imposed by the district judge, pursuant to s 30(2)(a), was wrong in law and should be quashed by an exercise of my powers of criminal revision.

The decision below

3 Section 30 reads:

30(1) – Any person who has in his possession any obscene film shall be guilty of an offence and shall be liable on conviction to a *fine of not less than \$500 for each such film* he had in his possession (but not to exceed in the aggregate \$20,000) or to imprisonment for a term not exceeding 6 months or to both.

30(2) Any person who has in his possession any obscene film knowing or having reasonable cause to believe the film to be obscene shall be guilty of an offence and *shall be liable on conviction* -

(a) to a fine of \$1,000 for each such film in his possession (but not to exceed in the aggregate \$40,000) or to imprisonment for a term not exceeding 12 months or to both;

(b) in the case of a second or subsequent conviction, to a fine of not less than \$2,000 for each such film in his possession (but not to exceed in the aggregate \$80,000) or to imprisonment for a term not exceeding 2 years or to both.
[emphasis added]

4 There are three possible interpretations of the phrase "shall be liable ... to a fine of \$1,000 for each such film" in s 30(2)(a). First, a 'fixed quantum' of \$1,000 must be imposed. Secondly, the maximum fine which may be imposed is \$1,000 and thirdly, the minimum fine which must be imposed is \$1,000. In imposing a fine of \$500 per film on Loo, the district judge interpreted the phrase to mean that he had a discretion to impose a maximum fine of \$1,000 per film, i.e. the second possible interpretation.

5 The district judge rejected the first possible interpretation, i.e. that s 30(2)(a) prescribes a fixed quantum of \$1,000. He found that there was no compelling reason for Parliament to remove the court's discretion entirely only for the first offence of knowingly possessing obscene films when it clearly allowed the courts a discretion in sentencing all the other offences in the Act. In particular, s 30(2)(b) confers a discretion on the courts in respect of sentencing repeat offenders of the same offence of knowingly possessing obscene films as it expressly stipulates a mandatory minimum fine of \$2,000, subject to an aggregate of \$80,000. There should be no reason why the court should have a discretion in imposing a sentence for repeat offenders, but not first time offenders. Reading s 30(2)(a) literally would lead to absurdity for another reason. Under s 30(1), if a person is convicted of a strict liability offence of possession of an obscene film, the court has the power to impose a fine of at least \$500 per film but not exceeding \$20,000 in aggregate. It would be absurd if the court must impose a fixed fine of \$1,000 for the offence of knowingly possessing an obscene film while it retains the discretion to impose a fine of more than \$1,000 for the lesser offence of mere possession of obscene films.

6 As between the second interpretation, i.e. that the court has the discretion to impose a maximum fine of \$1,000, and the third interpretation, i.e. that the court has the discretion to impose a minimum fine of \$1,000, the district judge initially chose the second interpretation. He explained that he was influenced by the fact that, *prima facie*, the expression "shall be liable" does not connote any specific mandatory sentence, much less any mandatory minimum sentence. He relied on the decisions of the High Court in *PP v Lee Soon Lee Vincent* [1998] 3 SLR 552, at 14, followed in *Chng Gim Huat v PP* [2000] 3 SLR 262 for this proposition.

7 However, in his grounds, he admitted that the second interpretation was not correct. With the benefit of further research and hindsight, he agreed with the contention of the DPP in this revision that the third interpretation was the correct one. This was because a speech made in Parliament by the Minister for Information and the Arts during the Second Reading of the Films (Amendment) Bill on 27 February 1998 clarified the intention of Parliament to impose a mandatory minimum fine of \$1,000 for the offence of possession of obscene films. The Minister made the following statement:

Sir, the current penalties are clearly not of sufficient deterrence. In this Bill, we are therefore proposing enhanced penalties.....For the possession of obscene film and videos, the minimum fine will also be doubled from \$500 to \$1,000 per film, up to a maximum of \$40,000. [emphasis mine]

My decision

8 In my view, the DPP and the district judge rightly adopted the interpretation that s 30(2)(a) gives the court a discretion to impose a fine of not less than \$1,000 per film with an aggregate not exceeding \$40,000.

9 The district judge correctly rejected the literal interpretation of s 30(2)(a). He elucidated clearly the absurdity and anomaly that would result if a literal interpretation was adopted such that the courts' hands were tied in sentencing because it would have to impose a fixed fine of \$1,000 per film. Such an interpretation would be inconsistent with the approach taken by the draftsman in the rest of s 30, as pointed out by the district judge whose reasoning I have set out at 5.

10 The remaining issue was whether \$1,000 is the maximum or minimum fine that the court can impose when it exercises its discretion in sentencing. The language of s 30(2)(a) is ambiguous. Difficulties arise in both interpreting \$1,000 as a maximum or minimum fine. The imposition of a maximum fine of \$1,000 appears to be inconsistent with the rest of s 30 which empowers the court to impose a discretionary fine subject to a mandatory minimum for all the other offences of possession of obscene films. On the other hand, the expression "shall be liable" does not, *prima facie*, connote any specific mandatory punishment, such as a fixed quantum of fine: *PP v Lee Soon Lee Vincent*. *A fortiori*, the phrase does not necessarily impose a mandatory minimum sentence.

11 In the face of the ambiguity in the statutory language, an interpretation that would promote the purpose or object underlying s 30(2)(a) would be preferred to one which would not do so: s 9A(1) of the Interpretation Act (Cap 1, 1997 ed.). Furthermore, since this s 30(2)(a) is ambiguous and a literal reading of the provision is manifestly absurd or unreasonable, in view of its context, purpose and object, I am entitled to take into account any relevant debates in Parliament to interpret it, pursuant to s 9A(2)(b) read with s 9A(3)(d) of the Interpretation Act.

12 In the present case, the intention of Parliament in amending s 30(2)(a) was clearly stated in the speech made by the Minister for Information and the Arts in Parliament during the Second Reading of the Films (Amendment) Bill on 27 February 1998. In the passage of his speech quoted at 7, the Minister referred to the doubling of the "minimum fine" from \$500 to \$1,000 per film, up to a maximum of \$40,000, for the possession of obscene films, so as to ensure that the penalties serve as a sufficient deterrence.

13 The Minister's reference to the previous minimum fine of \$500 was a reference to the old statutory scheme, i.e. the Films Act (1981 ed.). Section 29(1)(a) of the old Act, which dealt with the offence of possession of obscene films, stated that any person who has in his possession any obscene film shall be guilty of an offence and "shall be liable on convictionto a fine of *not less than* \$500 for each such film he had in his possession (but not to exceed in aggregate \$20,000)...". The wording of the section clearly and expressly provided for a minimum fine of \$500 per film, for the offence of possession of obscene films.

14 Section 30(2)(a) of the present Films Act was enacted to put into effect Parliament's

intention to raise the "minimum fine" from \$500, as stipulated in s 29(1)(a) of the old Act, to \$1,000 per film. Unfortunately, the draftsman of the present Films Act did not retain the clear wording of s 29(1)(a), i.e. that an offender was liable "to a fine of not less than \$X" to reflect the intention of Parliament to retain the scheme of minimum fines. Instead, the draftsman adopted the ambiguous language of "shall be liable on conviction to a fine of \$1,000...". In my view, this was a slip in drafting. Consequently, the literal reading of s 30(2)(a) does not reflect the true intention of Parliament and should be rejected. Applying s 9A(1) of the Interpretation Act, s 30(2)(a) must be read to impose a mandatory minimum fine of \$1,000 per film for the offence of knowingly being in possession of obscene films to give effect to the clear and express intention of Parliament in enacting the subsection.

15 For the sake of completeness, it was also necessary to deal with the effect of s 41 of the Interpretation Act. That section stipulates that:

Whenever in any written law a penalty is provided for an offence, such provision shall imply that such offence shall be punishable upon conviction by a penalty not exceeding (except as may be otherwise expressly mentioned in the written law) the penalty provided.

A straight application of s 41 of the Interpretation Act to the construction of s 30(2)(a) would mean that a court in sentencing offenders under the subsection can only impose a maximum fine of \$1,000. The application of s 41 of the Interpretation Act conflicts with the application of s 9A(1) of the same Act. The DPP contended that s 9A(1) should take precedence over s 41. I agreed with him. Section 9A(1) encapsulates the fundamental and paramount principle that a purposive interpretation of statutes is to be preferred as it gives effect to Parliament's intention. Bearing in mind that the court's role in the interpretation and application of the law is to give effect to, and not hinder the fulfillment of, Parliament's intention, s 9A(1) should take precedence over any other tools of statutory interpretation, including s 41. Accordingly, s 41 should not prevent the court from adopting an interpretation of s 30(2)(a) which gives effect to Parliament's intention to impose a minimum fine of \$1,000 per film.

Conclusion

16 For the above reasons, I allowed the petition for criminal revision and enhanced the fine imposed on Loo from \$500 to \$1,000 per film for each of the three obscene films that he possessed contrary to s 30(2)(a) of the Act, i.e. the total fine imposed was increased from \$1,500 to \$3,000. Since Loo had already paid the fines of \$1,500 previously imposed on him by the district judge, he must pay an additional fine of \$1,500 or serve 15 days imprisonment in default.

Sgd:

YONG PUNG HOW

Chief Justice

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