Wang Yuming *v* Public Prosecutor
[2011] SGHC 59

Case Number : Magistrate's Appeal No 429 of 2010 (DAC 55049-73 of 2010)

Decision Date : 15 March 2011

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Loh Lin Kok (Loh Lin Kok) for the appellant; Charlene Tay (Deputy Public Prosecutor) for the respondent.

Parties : Wang Yuming — Public Prosecutor

Criminal Procedure and Sentencing

15 March 2011 Judgment reserved.

Choo Han Teck J:

1 The appellant is a Singapore citizen. He became acquainted with one Wang Yingde ("Wang"), the managing director of Shanghai Construction (Group) General Company ("Shanghai Construction"), in 2003. He pleaded guilty to 25 charges in contravention of s 22(1)(d) read with s 23(1) of the Employment of Foreign Workers Act (Cap 91A, 1997 Rev Ed) ("EFWA"). 75 other charges were taken into consideration for the purposes of sentencing. He was convicted on the 25 charges, sentenced to two months imprisonment on each charge and was ordered to serve the first six sentences consecutively, thus making the total term of imprisonment twelve months.

2 The details of the charges were set out in the Statement of Facts as follows —

> 5 The accused abetted the said Wang Yingde by engaging in a conspiracy to furnish information which is false in a material particular by providing the CPF account details of the willing Singaporeans and Singapore Permanent Residents who were freelance workers in his company to the said Wang Yingde to contribute money into their CPF accounts even though these persons were not employed by Shanghai Construction, so that the said Wang Yingde could direct one Xu Hong (NRIC SXXXXXXXE) to certify in the applications made by Shanghai Construction to the Controller for the worker passes ("Controller") in the name of the above mentioned foreign workers that the Shanghai Construction CPF accounts (which is used by the Controller to determine the Shanghai Construction's local and foreign workforce entitlement) only included contributions made to persons actively employed by Shanghai Construction. The said declaration forms containing the said false statement were submitted to [the Ministry of Manpower ("MOM")]. Subsequently, the work permit applications were approved and work permits were issued to the above said foreign workers based on the false statements in the said declaration forms.
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> 6 The accused used his company premises as a collection point to collect personal information of the Singaporeans and Singapore Permanent Residents for the said Wang Yingde. The accused helped the said Wang Yingde as he wanted to maintain a good working relationship with him to continue obtaining construction projects from him. Investigations have revealed that the accused had provided the CPF account details of 56 Singaporeans and Singapore Permanent Residents to the said Wang Yingde.

7 The accused was aware that the foreign workforce entitlement of Shanghai Construction was computed based on the number of local workforce employed by it. He was also aware that the number of local workforce was determined from the CPF accounts of Shanghai Construction.

8 The declaration in clause 8 of the said declaration forms, that Shanghai Construction's CPF account only included CPF contributions made to persons actively employed by it, was a material consideration in MOM's decision to grant work permits to the said foreign workers. The Work Pass Division (WPD) of the MOM had confirmed that had they known at the time of the aforesaid applications that not all of the local workers receiving CPF contributions from the Shanghai Construction were actively employed by Shanghai Construction, WPD would not have approved the work permit applications. Further, WPD has also confirmed that the applications relating to the above proceeded charges would not have been approved as the Shanghai Construction did not have sufficient foreign worker entitlement based on its genuine local workforce.

3 Counsel for the appellant, Mr Loh Lin Kok, submitted that the sentences were individually harsh because the trial judge had meted out the sentences under the Employment of Foreign Manpower Act (Cap 91A) ("EFMA") which came into effect on 1 July 2007, replacing the EFWA. Yet, the appellant had been charged under the EFWA. It is not clear if the reference in the grounds below was a typographical error but I would give the benefit of the doubt to the appellant, without criticism of the judge, and review the appropriateness of the sentences on the basis of the EFWA. With regard to the offences in question, the EFMA increased the punishment from $5,000 to $15,000 and imprisonment from six months to twelve months.

4 Furthermore, counsel submitted that on the principle of the one-transaction rule, the total term of imprisonment was excessive. The prosecution submitted that the offences took place on four different dates and were therefore distinct offences. The dates in question were 24 and 31 January 2007 and, 1 and 2 February 2007. However, the charges taken into consideration for sentencing concerned offences committed in March and April 2007. The criminal activity, not the act, was thus carried out over a period of about three months. The one-transaction principle is thus not relevant but, in view of the nature of the appellant's involvement in the offences, the totality principle remains relevant. The individual sentences of two months, even under the EFWA, were not manifestly excessive, but they must be considered in totality.

5 I am also of the view that while the court is at liberty to impose more than two consecutive sentences and may do so in order to apply the totality principle, given the facts of this case and taking his antecedent into account, the appellant should be given only four consecutive sentences. The total term of imprisonment will therefore be eight months.

6 For the above reasons the sentence of imprisonment was varied from a total of twelve months to eight with effect from 15 April 2011.