

Public Prosecutor v Quek Chin Chuan
[2000] SGHC 102

Case Number : Cr Rev 10/2000
Decision Date : 01 June 2000
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Jennifer Marie and Wong Kok Weng (Deputy Public Prosecutors) for the petitioner; Eddie Koh (Yik Koh Teo & Partners) for the respondent
Parties : Public Prosecutor — Quek Chin Chuan

Courts and Jurisdiction – District court – Powers of district court – Order of district court for police to accompany accused out of jurisdiction to obtain evidence from Defence witness – Whether district court has power to compel police investigations – Whether police under duty to assist accused in defence – Whether evidence admissible – Whether order breaches international law

: Introduction

The respondent was charged under s 57(1)(d) of the Immigration Act (Cap 133) (‘the Act’) with harbouring an immigration offender, one Yu Hong Ying (‘the tenant’), a female PRC national. The tenant had leased the respondent’s premises at North Bridge Road, paying a monthly rent of \$200.

The respondent claimed that one ‘Mr Yu’, a PRC national, had introduced him to a Singaporean, ‘Ah Tan’. Ah Tan, in turn, introduced the tenant to the respondent. Ah Tan averred that he was the tenant’s husband. The respondent said that Ah Tan had a pink Singapore identity card from which he took down Ah Tan’s particulars. However, he had since misplaced these details and thus could no longer locate Ah Tan. Based on Mr Yu’s introduction, the respondent honestly believed that Ah Tan was Singaporean and thus did not suspect that the tenant, ‘Mrs Tan’ was a foreigner. The respondent wished to call Mr Yu as a witness in his defence. He was able to contact Mr Yu by telephone and the respondent claimed that Mr Yu had initially been willing to come to Singapore to give evidence, but subsequently could not do so as he had problems getting his passport renewed.

At the pre-trial conference, counsel for the respondent sought an adjournment and permission from the court for the respondent to go to China, look for Mr Yu and obtain a statement from him regarding the circumstances under which the respondent had been introduced to Ah Tan and the tenant. The application was refused.

However, on the first day of the trial before the district judge, counsel once again made the application. This time, the district judge granted the application and ordered that the hearing be adjourned. The respondent would be allowed to travel to Fujian province in China between 8 April and 21 April 2000. His trip would however be restricted to three days within which he would have to locate Mr Yu. If Mr Yu could not be found, the respondent would nevertheless have to return to Singapore. The district judge also ordered that an investigation officer, or another officer holding the rank of Sergeant or above from the same Police Division, accompany the respondent to China to enable independent verification of any conversation that would transpire between the respondent and Mr Yu.

The decision

The district judge felt that given the presumptions that operate in this area of law and the duty

imposed on landlords who lease their premises to people who subsequently turn out to be immigration offenders, it was obvious that the respondent would be in no position to deny harbouring the tenant under s 2 of the Act. The only defence available to him was that he did not know, or have reason to believe, that the tenant was an immigration offender. As the crux of his defence was that Ah Tan had introduced the tenant as Mrs Tan and that the respondent had thus no reason to believe that she was a foreigner, it was critical to establish the existence of Ah Tan and to show that he was not a convenient fabrication. At present, this could only be done through Mr Yu.

As such, the district judge allowed the application. He ordered that the investigation officer or the another officer of sufficient rank follow the respondent so that there would be independent verification of what Mr Yu might say. The district judge noted that there might be questions of security relating to the police officer's travel arrangements, but that these could be easily remedied by practical solutions. He also accepted that it was not the duty of the investigating officer to assist the respondent in preparing for his defence. Nevertheless, it was the prosecution's duty to investigate fully and make every reasonable effort to establish all relevant and material matters which may arise in the course of the trial. The prosecution had to address all aspects which could be relevant to their case including those aspects that might counter any defence allegations.

The appeal

Although the respondent subsequently withdrew his application on 9 May 2000 to go to China with a police officer to take a statement from Mr Yu, the Public Prosecutor decided to proceed with the application for a criminal revision of the district judge's order under s 23 of the Supreme Court of Judicature Act (Cap 322) read with s 268 of the Criminal Procedure Code (Cap 68) ('CPC') on the basis that there was something 'palpably wrong in the decision that strikes at its basis as an exercise of judicial power' by the district judge: **Ang Poh Chuan v PP** [\[1996\] 1 SLR 326](#). The Public Prosecutor raised four issues in the application: the power of the district court to compel investigations; whether it is the duty of the police to assist the defence in the preparation of his case; whether the statements would amount to hearsay; and the potential breach of international law if the district judge's order was carried out.

The power of the district court to compel investigations

The Public Prosecutor contended that the investigations disclosed a case to be met by the respondent on the charge preferred against him. The trial judge thus had no powers to compel the police or the prosecution to conduct further investigations.

The District Court is a creature of statute and its powers are therefore subject to what has been conferred on it by the relevant applicable written laws. The District Court's powers are set out in s 50 of the Subordinate Courts Act (Cap 321) read with ss 7 and 8 of the CPC. Sections 7 and 8 of the CPC read:

7	(1)	Subject to this Code, every District Court shall have jurisdiction to try all offences for which the maximum term of imprisonment provided by law does not exceed 10 years or which are punishable by fine only.	
	(2)	Notwithstanding subsection (1), a District Court may try any offence, other than an offence punishable with death, if -	
		(a)	the Public Prosecutor applies to such Court to try such offence; and
		(b)	the accused consents, or, if more than one are charged together with the same offence, all such accused consent to be tried by such Court.
	(3)	Every District Court shall have in the exercise of its jurisdiction all the powers which belong to and are exercised by a Magistrate's Court.	
8	(1)	Subject to this Code, every Magistrate's Court shall have cognizance of and power and authority to -	

		(a)	hear, try, determine and dispose of in a summary way prosecutions for offences for which the maximum term of imprisonment provided by law does not exceed 3 years or which is punishable by fine only;
		(b)	inquire into offences committed or alleged to have been committed with a view to committal for trial by the High Court;
		(c)	inquire into complaints of offences and summon and examine witnesses touching such offences, and summon and apprehend and issue warrants for the apprehension of criminals and offenders and deal with them according to law;

		(d)	issue warrants to search or to cause to be searched places wherein any stolen goods or any goods, articles or things with which or in respect of which any offence has been committed are alleged to be kept or concealed, and require persons to furnish security for the peace or for their good behaviour according to law; and
		(e)	do all other matters and things which a Magistrate's Court is empowered to do by any Act.
		...	

As can be seen, the powers of the District Court are generally limited to the trying of cases. The District Court also has power to do all other matters and things peripheral to this general power that have been stated in the CPC.

Specifically, the main problem with the district judge's order was that he did not have the power to order the investigating officer or another police officer to follow the respondent to China to verify the statements made by Mr Yu, should they be able to locate him. In my judgment, it is clear from the statutory provisions that the District Court does not have the power to order that further investigations be carried out by the police or prosecution. It would be wrong to assume that the District Court may direct the investigative process carried out by the police or compel the prosecution and police to carry out further investigations. This would in effect amount to the judiciary having control over the police and prosecution's discretion in conducting investigations or proceeding with

prosecutions.

The error of this position is evident by the fact that under s 336 of the CPC, the Public Prosecutor has the control and direction of criminal prosecutions and proceedings. Likewise, the police have the power over the scope of investigations it wishes to carry out. This must necessarily mean that the courts do not have the power to carry out the same functions. Doing so would otherwise amount to an unacceptable interference in executive discretion by the judiciary in such circumstances.

Was there a duty on the part of the police to assist in the preparation of the defence?

It was acknowledged by the district judge in his grounds of decision that it is not the duty of the police to assist the respondent in preparing his defence. However, he said that the prosecution should investigate fully and make every reasonable effort to establish all relevant and material matters that could arise during the trial.

In my view, the district judge erred in then concluding that he could order the police and prosecution to accompany the respondent to China. Given his recognition of the fact that the police were under no duty to assist the respondent, it was a contradiction to order that they follow the respondent to China to search for and interview the elusive Mr Yu. When it comes to preparation for defence, it is the accused's own responsibility to look for his witnesses and persuade them to testify on his behalf. The role of the police and prosecution is merely to gather enough evidence, to be given orally by witnesses or otherwise, to sustain the case against the accused. Although the district judge accepted that there was no duty on the part of the police to assist the respondent, the order made by him appeared to imply as much that there was such a duty. This cannot be the correct position for the reasons above.

Hearsay

The next issue raised by the prosecution was whether any statement made by Mr Yu in China to either the respondent or the police officer accompanying him would be excluded under the hearsay rule. Under s 121(1) of the CPC, a police officer conducting an investigation may examine a witness orally and reduce his statement to writing. However s 122(1) of the CPC expressly prohibits the admission of statements of witnesses made to the police in a trial as evidence. The only exception to this is in s 122(2) of the CPC where the witness is called to the stand and it is wished to impeach his credit as a witness. It would therefore serve no purpose to send the police officer to record the statement from Mr Yu.

If the statement was made to the respondent, the content of the conversation would then be excluded as hearsay and cannot be used as evidence of any facts asserted by Mr Yu. None of the exceptions to the hearsay rule apply to the circumstances of this case. The statement would only be of some minimal use if the very fact that it is made is itself of relevance. Thus, as the whole purpose of the order was premised on the fact that Mr Yu could not come to Singapore to testify, the order would serve no real purpose as Mr Yu's statement would not be admissible in evidence unless he testified here and was open to cross-examination by the prosecution.

Breach of international law

The final issue raised by the prosecution was that compliance with the district judge's order would

result in a breach of international law as the police would be exercising its investigative powers extra-territorially without obtaining the prior consent of the Chinese authorities.

According to the learned editors of ***Oppenheim`s International Law*** (9th Ed), it is a tenet of international law that a State, failing the existence of a permissive rule to the contrary, may not exercise its power in any form in the territory of another State. However, the editors also say that international law does not prevent a state from exercising jurisdiction, within its own territory, over its nationals travelling or residing abroad, since they remain under its personal authority and may legislate with regard to their conduct abroad. In this regard, I refer, for example, to s 8A of the Misuse of Drugs Act (Cap 185) which makes the consumption of controlled drugs outside Singapore by a Singapore citizen or permanent resident an offence.

Nonetheless in my judgment, this order does not fall within the situation envisaged above. Compliance with the order in this case would have amounted to the Singapore police carrying out official investigations on foreign territory, apparently without the permission of the Chinese government. As such, I did not think that the order should remain intact.

Conclusion

In the premises, I allowed the Public Prosecutor`s application and quashed the district judge`s order.

Outcome:

Petition allowed.

Copyright © Government of Singapore.